TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1903.

No. 591.

THE UNITED STATES, PETITIONER,

vs.

SING TUCK OR SING DO AND THIRTY-ONE OTHERS.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

FILED JUNE 30, 1904.

(19242.)

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a United States circuit court of appeals for the second circuit.

SING TUCK OR KING DO AND THIRTY-ONE OTHERS, appellants,
vs.
THE UNITED STATES, APPELLEE.

Transcript of record; appeal from the circuit court of the United States for the northern district of New York.

Printed under the direction of the clerk.

(Indorsed:) Filed Jan. 23, 1904. William Parkin, clerk. United States circuit court of appeals, second circuit.

1 *Petition.*

United States circuit court northern district of New York.

In the matter of the application of Sing Tuck or King Do, Boke Kay, Mon Chock, One Mon, King Dock, Gee Kee, Bok Wah, Quen Jong, Quong Sang, Wing Foo, Chong Yuet, Hong (Quai) Yong, Sing Kee, Due Ark, Hong Tai, Lum Chong, Sang Chong, Ming Chuey, Ham Sang, That (Shet) Shong, Do Lin, Jane (Lop) Lys, Mon (Gee) Che, Fong Ying, Ark On, Sing Hoy, Quin Lung, Lum Quong, Lum Mow, Bow Lung, Gong Sin, and Ark Len Wing for a writ of habeas corpus.

The petition of R. M. Moore respectfully shows to this court upon information and belief as follows:

First. That your petitioner is an attorney and counsellor at law, residing and practicing as such in the city of New York, and has authority to institute these proceedings.

Second. That the relators above named are Chinese persons, born in the United States of America, and are citizens thereof, and that they are restrained of their liberty and detained by Thomas D'Arcy, Chinese inspector of the United States at Malone, N. Y., in what is known as the Detention House, an establishment jointly maintained by the United States Government and the Canadian Pacific Railroad, a foreign railroad corporation.

2 Third. That such detention is illegal and without any authority of law whatever.

Fourth. That the above-named Chinese persons have been denied admission to the United States by the Chinese inspector in charge of the detention house at Malone, N. Y., as appears by the attached copies of the orders denying them admission, dated October 13, 1903, which said orders are made a part of the petition herein.

Deponent further says that the said Chinese inspector has no right or authority to pass upon the rights of the said Chinese persons to enter the United States, but has only authority to pass upon the claim upon the right of aliens seeking to enter the United States.

Wherefore, your petitioner prays that a writ of habeas corpus may be issued herein and that said relators may be discharged from said prison.

Dated Oct. 16, 1903.

R. M. MOORE.

STATE OF NEW YORK,
County of Franklin, ss:

R. M. Moore, being duly sworn, says that he is the petitioner above named; that he has read the foregoing petition and knows the contents thereof; that the same is true of his own knowledge except as to those matters therein stated to be alleged upon information and belief, and that as to those matters he believes it to be true.

R. M. MOORE.

Sworn to before me this 16th day of Oct., 1903.

GEO. J. MOORE,
Notary Public, Franklin County.

I, R. M. Moore, do certify and declare that I am authorized by the relators to, and do hereby waive the personal and physical presence of the relators upon the return of this writ.

R. M. MOORE.

3 (Copy.)

TREASURY DEPARTMENT,
OFFICE OF CHINESE INSPECTOR,
Brooklyn, N. Y., October 13, 1903.

In re Sang Chong, No. 255, ex S. S. "Empress of India," September 23rd, 1903.

The above-named applicant, Sang Chong, whose photograph is attached to the accompanying examination, presented himself in person at the Malone detention house September 23, 1903. At that time he was requested by Chinese Inspector Thomas D'Arcy to make a voluntary statement relative to his right to be admitted to the United States, or to furnish the names of any witnesses by whom he would be able to prove such right, but refused to do either, and upon being further questioned, in order that we might secure data to institute an investigation, refused to answer all questions excepting as to his name and the fact that he sought admission to the United States.

In view of the fact that this applicant is a person of the Chinese race, speaking the Chinese language, and having just arrived from China, having been given an opportunity to establish his right to enter and having refused to avail himself of such right, and as the burden of proof is upon him to establish his right to enter the United States, and having failed to do so, he is denied admission.

F. W. BERKSHIRE,
Officer in Charge.

An order indentical with the foregoing except in name was made in the case of each of the other petitioners.

4 (Endorsed:) Petition. Filed Oct. 23, 1903. Writ allowed ret. Novr. 10, 1903, at Utica. Geo. W. Ray, U. S. J. U. S. circuit court, N. D. of N. Y. Filed Nov. 2, 1903. W. S. Doolittle, clerk.

Writ.

In the name of the President of the United States of America. To Thomas D'Arcy, Chinese inspector, greeting:

We command you that you have the bodies of Sing Tuck or King Do, Boke Kay, Mon Chock, One Mon, King Dock, Gee Kee, Bok Wah, Quen Jong, Quong Aang, Ying Foo, Chonh Yuet, Hong (Quai) Yong, Sing Kee, Due Ark, Hong Tai, Lum Chong, Sang Chong, Wing Chuey, Ham Sang, That (Shet) Shong, Do Lin, Jane (Lop) Lys, Mon (Gee) Che, Fong Ying, Ark On, Sing Hoy, Quin Lung, Lim Quong, Lum Mow, Bow Lung, Gong Sin, and Ark Len Wing, by you imprisoned and detained, as it is said, in the detention house, so called, at Malone, in said northern district of New York, by whatever names they may be called or charged, before Hon. George W. Ray, judge of the United States district court for the northern district of New York, at his chambers in the United States court-house, in the city of Utica, N. Y., on the 10th day of November, 1903, to do and receive what shall then and there be commanded, and have you then and there this writ.

Witness, the honorable Melville W. Fuller, Chief Justice of the United States, at the city of Utica, New York, this 2d day of November, 1903.

[L. S.] W. S. DOOLITTLE, *Clerk.*

5 The personal appearance of the relators is hereby waived.

R. M. MOORE,
Atty. for Relators.

Allowed October 23, 1903.

GEO. W. RAY,
U. S. Judge.

(Endorsed:) Writ. Filed Nov. 10, 1903. W. S. Doolittle, clerk.

NORTHERN DISTRICT OF NEW YORK,
Oneida County, ss:

Thomas D'Arcy, being duly sworn, deposes and says: That he has read the foregoing return, signed the same, and knows the contents thereof, and that the same is true of his own knowledge, except as to those matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

THOMAS D'ARCY.

Subscribed and sworn to before me this 10th day of November, 1903.

C. W. HIGGINSON,
Notary Public, Oneida Co., N. Y.

6 United States District Court, Northern District of New York.

In the matter of the application of Bok Wah, No. 244, and others, for a writ of habeas corpus.

To the Honorable George W. Ray, United States district judge for the northern district of New York.

In obedience to the writ of habeas corpus issued in behalf of the above named Bok Wah, I certify and return:

First. That I am a sworn public officer of the United States of America, to wit, a Chinese inspector and inspector of immigration, appointed by and acting under the direction and authority of the Secretary of Commerce and Labor and the Commissioner-General of Immigration of the United States, having my official station at Malone, Franklin County, New York, in said district, near the border line between the United States and the Dominion of Canada, and as such officer and under such authority, am in charge of the detention quarters at Malone, New York, in which detention quarters all Chinese persons and aliens making application to enter the United States are detained, pending inquiry by the United States officer designated by law
7 for that purpose, as to the right of the said Chinese person or alien to enter said United States.

Second. That before the issuing of the writ herein and on the 23d day of September, 1903, the said above-named Bok Wah made application to the immigration officers of the United States located at Malone, New York, aforesaid, for admission and entry into the United States, he being a Chinese person and having immediately come from the Chinese Empire by the way of Vancouver over the Canadian Pacific Railroad; that such application to enter the United States was made at the border between the United States and the Dominion of Canada, and, for the purpose of convenience pending inquiry, as aforesaid, into his right to be admitted into the United States, he, the said Bok Wah was taken to said detention quarters at Malone, New York, the said Malone, New York, being a port of entry for Chinese immigrants, designated by the Secretary of the Treasury of the United States under an act of Congress; that at the time of the issuance of said writ, said above named Bok Wah was in my custody as such officer of the United States, he having been denied admission into the United States after an examination by the officers designated by law for that purpose, as to his right to enter the United States; and I was holding him for an opportunity to return him to China, when I received notice of this writ.

Third. That the said above-named Bok Wah presented himself in person at the Malone detention house on September 23, 1903, and made application to enter the United States, and that at that time he was given opportunity by F. W. Berkshire, immigration officer in charge of said port of entry, duly appointed as such by the honorable Secre-
8 tary of Commerce and Labor, under and pursuant to an act of Congress entitled "An act to establish the Department of Commerce and Labor," approved February 14, 1903, which said officer is under the control of the Commissioner-General of Immigration, to make such voluntary statement as he might desire relative to his right to be admitted into the United States, and he was informed that he might pro-

duce any witness by whom he would be able to prove such right, and full opportunity was given to the said Bok Wah to produce any evidence that he had, or might be able to produce, touching on his right to entry into the United States, but the said Bok Wah refused either to answer any questions himself touching on his right to enter the United States or to furnish the name of any witness by whom he might be able to prove such right, nor did he produce any paper or instrument showing his right to enter the United States, nor did he produce any proof, either oral or written, establishing such right. That attached hereto and made a part of this return is a certified copy of the proceedings had on the examination of the said Bok Wah upon his application to enter into the United States.

Fourth. That all the evidence produced by the said Bok Wah was submitted to the said F. W. Berkshire, and after the same was duly considered by the officer aforesaid, it was adjudged by him, on October 13, 1903, that the said applicant was an alien Chinese person, and not entitled to enter or remain in the United States; that attached hereto and made a part of this return is a copy of the written decision of said F. W. Berkshire, denying said Bok Wah the right to enter the United States.

Fifth. That among the rules and regulations promulgated by the Department of Commerce and Labor and the Commissioner-
9 General of Immigration governing the admission of Chinese persons into the United States are the following:

"Immediately upon the arrival of Chinese persons at any port mentioned in Rule 4, it shall be the duty of the officer in charge of the administration of the Chinese exclusion law to adopt suitable means to prevent communications with them by any person other than officials under his control; to have said Chinese persons examined promptly, as by law provided, touching their right to admission, and to permit those proving such right to land" (p. 36) Rule 6.

"The examination prescribed in Rule 6 should be separate and apart from the public, in the presence of Government officials and such witness or witnesses only as the examining officer shall designate, and, if upon the conclusion thereof, the Chinese applicant for admission is adjudged to be inadmissible, he should be advised of his right of appeal and his counsel should be permitted, after duly filing notice of appeal, to examine, but not make copies of the evidence upon which the excluding decision is based. R. 7.

"Every Chinese person refused admission under the provisions of the exclusion law by the decision of the officer in charge at the port of entry must, if he shall elect to take an appeal to the Secretary, give written notice thereof to said officer within two days after such decision is rendered." Rule 8.

"Notice of appeal provided for in Rule 8 shall act as a stay upon the disposal of the Chinese person whose case is thereby affected until a final decision is rendered by the Secretary; and within three days after the filing of such notice, unless further delay is required to investigate
10 and report upon new evidence, the complete record of the case, together with such briefs, affidavits, and statements as are to be considered in connection therewith, shall be forwarded to the Commissioner-General of Immigration by the officer in charge at the port of

arrival, accompanied by his views thereon in writing; but on such appeal no evidence will be considered that has not been made the subject of investigation and report by the said officer in charge." Rule 9.

"The burden of proof in all cases rest upon Chinese persons claiming the right of admission to, or residence within, the United States; to establish such right affirmatively and satisfactorily to the appropriate Government officers; and in no case in which the law prescribes the nature of the evidence to establish such right shall other evidence be accepted in lieu thereof; and in every doubtful case the benefit of the doubt shall be given by administrative officers of the United States Government." Rule 21.

Sixth. That upon information and belief the undersigned denies that the above-named Bok Wah is a citizen of the United States, and alleges that he is an alien and a Chinese laborer not entitled under the immigration laws and the Chinese exclusion law of the United States to be admitted into the United States, and that the holding and detention of the said Chinese person is under and by virtue of the laws and authority of the United States of America.

Seventh. That the undersigned admits that the petitioner, Robert M. Moore, esq., is an attorney and counsellor at law, residing and practicing his profession at Malone, New York, and the undersigned,
11 further answering said petition, denies each and every allegation thereof which is not hereinbefore specifically admitted.

THOMAS D'ARCY,
Chinese Inspector and Inspector of Immigration of the United States.

Attached to the foregoing is an order identical with that in the case of Sang Chong, except as to name.

12 MALONE DETENTION HOUSE, *Sept. 23, 1903.*

Bok Wah, Inspector, Thomas D'Arcy.
No. 244. Interpreter, Quan Foy.
Class, native. Steno., H. N. Sterling.
Ex S. S. "Empress of India," Sept. 23, 1903.

Q. What is your name?
A. Bok Wah.
Q. How old are you?
A. Twenty-one years of age.
Q. Do you wish to make application to enter the U. S.?
A. Yes, sir; come to the U. S.
Q. By what right do you seek admission to the U. S.?
No answer.
Q. You now have the right to make a voluntary statement relative to your right to be and remain in the U. S., and if you will give the names of two witnesses who knows that you have the right, their testimony will be taken, and your application will be carefully considered and promptly acted upon.
No answer.
Q. Are you married?
No answer.
Q. Have you any brothers in this detention house?

No answer.
Q. Have you any brothers or sisters living in the U. S.?
No answer.
Q. Have you any uncles or cousins living in the U. S.?
No answer.
Q. What is your father's name?
No answer.
Q. What is your mother's name?
No answer.
Q. What district in China did you come from?
No answer.
Q. What is the name of the steamer that you came over from China on?
No answer.
Q. When did you go back to China?
A. No answer.
Q. Have you ever lived in any other country but China?
No answer.
Q. Did you ever go to school?
No answer.
Q. Do you know of any reason why you should not be returned to China?
No answer.
13 Q. Will you sign this statement?
Refuses to sign.

THOMAS D'ARCY,
Immigrant Inspector.
QUAN FOY,
Chinese Interpreter.

SEPT. 26, 1903.

BOK WAH, recalled and examined by Inspector D'Arcy.

Q. Were you the same Chinaman that was examined by me in this office a few days ago?
A. Yes, sir.
Q. I show you a photograph and ask you whose picture it is.
A. It is mine.
(Photograph introduced in evidence and marked "Exhibit No. 1 of the testimony of Bok Wah.")

I hereby certify that the above is a correct copy of the original statement of the above applicant.

THOMAS D'ARCY,
Chinese Inspector in Charge.

(Endorsed:) Return of Thomas D'Arcy. Filed Nov. 10, 1903. W. S. Doolittle, clerk.

NORTHERN DISTRICT OF NEW YORK,
Oneida County, ss:

Thomas D'Arcy, being duly sworn, deposes and says: That he has read the foregoing return, signed the same, and knows the contents

thereof, and that the same is true of his own knowledge except as to those matters therein stated to be alleged on information and belief and as to those matters he believes it to be true.

THOMAS D'ARCY.

Subscribed and sworn to before me this 10th day November, 1903.

C. W. HIGGISON,
Notary Public, Oneida Co., N. Y.

14 A return similar to the foregoing was made by Inspector D'Arcy in the case of each petitioner.

MALONE DETENTION HOUSE, *Sept. 24, 1903.*

Quin Lung, No. 280. Class, native. By ss. "Empress of India," Sept. 23, 1903.

Inspector, Thomas D'Arcy.
Interpreter, Quan Foy.
Steno., H. N. Sterling.

Q. What is your name?
A. Quin Lung.
Q. How old are you?
A. No answer (appears about 20).
Q. Do you now make application to come to the U. S.?
A. Yes, sir.
Q. You now have the right to make a voluntary statement relative to your being admitted to the U. S., and if you can give the name of two persons who knows you have such a right, they will be interviewed and their testimony taken and your case receive prompt attention.
No answer.
Q. Can you give the name of any person in the U. S. who knows you have the right to be admitted?
No answer.
Q. Have you any brothers living in this detention house?
No answer.
Q. Where is your mother living?
No answer.
Q. Where is your father living?
No answer.
Q. Have you got any friends living anywhere in the U. S.?
No answer.
Q. By what right do you seek admission to the U. S.?
No answer.
Q. Are you married?
No answer.
Q. What is your father's name?
No answer.
Q. Did you ever go to school in China?
No answer.
Q. Have you ever lived in any other country but China?
No answer.
Q. Can you read and write the Chinese language?
No answer.

Q. What is your number in this detention house?
Shows ticket 280.
15 Q. Will you sign this statement?
Refuses to sign.

THOMAS D'ARCY,
Immigrant Inspector.
QUAN FOY,
Chinese Interpreter.

SEPT. 26, 1903.

QUIN LUNG recalled and examined by Inspector D'Arcy:

Q. Are you the same Chinaman that was examined by me in this office a couple of days ago?
A. Yes, sir.
Q. I show you a photograph and ask you whose it is?
A. It is mine.
(Photograph introduced in evidence and marked "Exhibit No. 1 of the testimony of Quin Lung.")
I hereby certify that the above is a correct copy of the original statement of the above applicant.
(Signed) THOMAS D'ARCY,
Chinese Inspector in Charge.

(Endorsed:) Return of Thomas D'Arcy. Filed Nov. 10, 1903. W. S. Doolittle, clerk.

16 MALONE DETENTION HOUSE, *Sept. 24, 1903.*

Ark On, Inspector, Thomas D'Arcy.
No. 278, Interpreter, Quan Foy.
Class, Native, Steno., H. N. Sterling.
Ex. S. S. "Empress of Ondia," Sept. 23, 1903.

Q. What is your name?
A. Ark On.
Q. How old are you?
No answer. (Appears about 30 or 35.)
Q. Do you know how old you are?
No answer.
Q. Can you understand English?
No.
Q. Can you read and write the Chinese language?
A. No.
Q. What vessel did you come from China on?
No answer.
Q. How long have you lived in China?
No answer.
Q. Do you know any person living in the U. S.?
No answer.
Q. Where was your grandfather born?
No answer.

Q. Have you any brothers with you in the detention house?
No answer.
Q. Do you know any Chinese people in this detention house?
No answer.
Q. Have you any relations living in the U. S.?
No answer.
Q. Why did you come here?
No answer.
Q. Do you want to go to the U. S.?
No answer.
Q. Do you ask permission to go to the U. S.?
No answer.
Q. What is the number of your ticket?
A. 278.
Q. You want to go to the U. S.?
No answer.
Q. Have you any witnesses that you want to testify to the fact that you are entitled to be admitted to the U. S.?
No answer.
Q. If you have any such witnesses the officers will take their testimony when you bring them here.
No answer.

THOMAS D'ARCY,
Immigrant Inspect.
QUAN FOY,
Chinese Interpreter.

17 SEPT. 26, 1903.

ARK ON recalled and examined by Inspector D'Arcy:

Q. Are you the same Chinaman that was examined by me in this office a couple of days ago?
A. Yes, sir.
Q. I show you a photograph and ask you whose picture it is?
A. It is mine.
(Photograph introduced in evidence and marked "Exhibit No. 1 of the testimony of Ark On.")
I hereby certify that the above is a correct copy of the original statement of the above applicant.

THOMAS D'ARCY,
Chinese Inspector in Charge.

(Endorsed:) Return of Thomas D'Arcy. Filed Nov. 10, 1903. W. S. Doolittle, clerk.)

18 MALONE DETENTION HOUSE, *Sept. 23, 1903.*

Sing Tuck or King Doo.
No. 235.
Class, native.
Ex S. S. "Empress of India," Sept. 23, 1903.

Inspector, Thomas D'Arcy.
Interpreter, Quan Foy.
Steno., H. N. Sterling.

Q. What is your name?
A. King Doo.

Q. How old are you?
No answer.
Q. Do you now seek admission to the U. S.?
A. Yes, sir.
Q. You now have the right to make a voluntary statement of the officers relative to your being admitted to the U. S., and if you wish to furnish any references relative to your right to be in the U. S. they will be interviewed, their testimony taken, and your right to be admitted carefully considered and acted upon promptly.
No answer.
Q. Have you any attorney to represent you?
No answer.
Q. Do you wish to give the name of an attorney you want to represent you, and we will notify him?
No answer.
Q. How many years have you lived in China?
No answer.
Q. Have you ever lived in any other country but China?
No answer.
Q. Are you married?
No answer.
Q. Have you any brothers or blood relations in this detention house?
No answer.
Q. What is your father's name?
No answer.
Q. What is your mother's name?
No answer.
Q. What district in China did you come from?
No answer.
Q. What is the name of the steamer you came over on from China?
No answer.
Q. What is your number in this detention house?
A. Shows ticket 235.
Q. What floor in the building do you sleep on?
A. Top floor.
Q. Do you wish to make any further statement?
No answer.
19 Q. Do you want to sign this paper?
Witness refuses to sign.

THOMAS D'ARCY,
Immigrant Inspector.
QUAN FOY,
Chinese Interpreter.

SEPTEMBER 26, 1903.

KING DOO, recalled and examined by Inspector D'Arcy:

Q. Are you the same Chinaman that was examined by me in this office a few days ago?
A. Yes, sir.
Q. I show you a photograph and ask you whose picture it is.
A. It is mine.

(Photograph introduced in evidence and marked "Exhibit No. 1 of the testimony of King Doo.")

I hereby certify that the above is a correct copy of the original statement of above applicant.

THOMAS D'ARCY,
Chinese Inspector in Charge.

(Endorsed:) Return of Thomas D'Arcy. Filed Nov. 10, 1903. W. S. Doolittle, clerk.

20 MALONE DETENTION HOUSE, *Sept. 23, 1903.*

Boke Kay. Inspector, Thomas D'Arcy.
No. 236. Interpreter, Quan Foy.
Class, Native. Steno., H. N. Sterling.
Ex S. S. "Empress of India," Sept. 23, 1903.

Q. What is your name?
A. Boke Kay.
Q. How old are you?
No answer.
Q. Do you seek admission to the U. S.?
A. Yes, sir.
Q. You now have the right to make a voluntary statement relative to your being admitted to the U. S., and if you will give us the names of witnesses who knows you have the right to be and remain in the U. S. they will be interviewed, their testimony taken, and your right to be admitted will be carefully considered and promptly acted upon.
No answer.
Q. Are you married?
A. No.
Q. Have you any brothers in this detention house?
No answer.
Q. What is your father's name?
No answer.
Q. From what district in China did you come from?
No answer.
Q. What is the name of the steamer you came over on?
No answer.
Q. Have you ever lived in any other country but China?
No answer.
Q. Have you any blood relations living in the U. S.?
No answer.
Q. What is your number in the detention house?
No answer.
Q. What is your father's name?
No answer.
Q. What is your mother's name?
No answer.
Q. By what right do you seek admission to the U. S.?
No answer.
Q. In what district in China were you born?
No answer.

Q. What is your number in this detention house?
A. Shows ticket No. 236.
21 Q. Do you wish to sign this statement?
A. Don't know how to write.

THOMAS D'ARCY,
Immigrant Inspector.
QUAN FOY,
Chinese Interpreter.

SEPT. 26, 1903.

BOKE KAY, recalled and examined by Inspector D'Arcy:

Q. Are you the same Chinaman that was examined by me in this office a few days ago?
A. Yes, sir.
Q. I show you a photograph and ask you whose picture it is.
A. It is mine.
(Photograph introduced in evidence and marked "Exhibit No. 1 of the testimony of Boke Kay.")
I hereby certify that the above is a true copy of the original statement of the above applicant.

THOMAS D'ARCY,
Inspector in Charge.

(Endorsed:) Return of Thomas D'Arcy. Filed Nov. 10, 1903. W. S. Doolittle, clerk.

22 MALONE DETENTION HOUSE, *Sept. 23, 1903.*

Non Chock, Inspector, Thomas D'Arcy.
No. 237, Interpreter, Quan Foy.
Class, native, Steno., H. N. Sterling.
Ex S. S. "Empress of India," Sept. 23, 1903.

Q. What is your name?
A. Mon. Chock.
Q. How old are you?
No answer. (Applicant appears to be about 33 or 34 years of age.)
Q. Do you now make application to enter the U. S.?
A. Yes; born in the U. S.
Q. Why do you want to go the U. S.?
No Answer.
Q. Where do you want to go?
No answer.
Q. What city in the U. S. do you expect to find employment in?
No answer.
Q. You now have the right to make a voluntary statement relative to your being admitted to the U. S., and if you will give the names of two persons who knows you have such a right, they will be interviewed by the officers and their testimony taken, and your application will be carefully considered and promptly acted upon.
No answer.
Q. Do you wish to make a statement?
No answer.
Q. Have you got an attorney to represent you?

No answer.

Q. Do you want to give the name of an attorney to represent you, and will notify him?

No answer.

Q. What is your father's name?

No answer.

Q. What is your mother's name?

A. No answer.

Q. Have you any brothers in this detention house?

No answer.

Q. Have you any blood relations in this detention house?

No answer.

Q. Have you any uncles or cousins in the U. S.?

No answer.

Q. Have you any blood relations in the U. S.?

No answer.

23 Q. What district in China did you come from?

No answer.

Q. How many years have you lived in China?

No answer.

Q. What is the name of the steamer you came over on from China?

No answer.

Q. Have you ever been to school in China?

No answer.

Q. Can you read and write the Chinese language?

No answer.

Q. Will you sign this statement?

Refuses to sign.

Q. Can you write?

No, sir; don't know how to write.

Q. What is your number in this detention house?

A. Shows ticket No. 237.

THOMAS D'ARCY,
Immigrant Inspector.
QUAN FOY,
Chinese Interpreter.

SEPT. 26, 1903.

MON CHOCK, recalled and examined by Inspector D'Arcy.

Q. Are you the same Chinaman that was examined by me in this office a few days ago?

A. Yes, sir.

Q. I show you a photograph and ask you whose picture it is.

A. It is mine.

(Photograph introduced in evidence and marked "Exhibit No. 1 of the testimony of Mon Chock.")

I hereby certify that the above is a correct copy of the original statement of the above applicant.

THOMAS D'ARCY,
Chinese Inspector in Charge.

(Endorsed:) Return of Thomas D'Arcy. Filed Nov. 10, 1903. W. S. Doolittle, clerk.

24 MALONE DETENTION HOUSE, *Sept. 23, 1903.*

One Mon. Inspector, Thomas D'Arcy.
No. 238. Interpreter, Quan Foy.
Class, Native. Steno. H. N. Sterling.
Ex. S. S. "Empress of India," Sept. 23, 1903.

Q. What is your name?
A. One Mon.
Q. How old are you?
No answer. (Witness appears to be about 20 years of age.)
Q. Do you now seek admission to the U. S.?
A. Yes, sir.
Q. You now have the right to make a voluntary statement relative to your right to be admitted to the U. S., and if you can furnish the names of two persons who knows you have such a right they will be interviewed and their testimony taken, and your application will be carefully considered and promptly acted upon.
No answer.
Q. Do you wish to give the name of any of your friends, that they can be interviewed relative to your right to be admitted?
No answer.
Q. Have you any brothers in this detention house?
No answer.
Q. Have you any blood relations in this detention house?
No answer.
Q. How many years have you lived in China?
No answer.
Q. Did you ever go to school?
No answer.
Q. Can you read and write the Chinese language?
A. No, sir.
Q. Are you sure about that?
A. Yes, sir.
Q. Have you any uncles or cousins living in the U. S.?
No answer.
Q. Have you any blood relations living in the U. S.?
No answer.
Q. What is the name of the steamer that you come over from China on?
No answer.
Q. Are you married?
No answer.
Q. What is your father's name?
No answer.
Q. Where does your father live?
No answer.

25 Q. Can you give the name of any person who knows that you have the right to be and remain in the U. S.?
No answer.
Q. Do you know any reason why you should not be sent back to China?
No answer.

Q. Will you sign this statement?
Refuses to sign.
Q. What is your number in this building?
A. Shows ticket No. 238.

THOMAS D'ARCY,
Immigrant Inspector.
QUAN FOY,
Chinese Interpreter.

SEPT. 26, 1903.

ONE MON, recalled and examined by Inspector D'Arcy:

Q. Are you the same Chinaman that was examined by me in this office a few days ago?
A. Yes, sir.
Q. I show you a photograph and ask you whose picture it is
A. It is mine.
(Photograph introduced in evidence and marked "Exhibit No. 1 of the testimony of One Mon.")

I hereby certify that the above is a correct copy of the original statement of the above applicant.

THOMAS D'ARCY,
Inspector in Charge.

(Endorsed:) Return of Thomas D'Arcy. Filed Nov. 10, 1903. W. S. Doolittle, clerk.

26 MALONE DETENTION HOUSE, *Sept. 23, 1903.*

King Dock. Inspector, Thomas D'Arcy.
No. 239. Interpreter, Quan Foy.
Class, Native. Steno., H. N. Sterling.
Ex S. S. "Empress of India," Sept. 23, 1903.

Q. What is your name?
A. King Dock.
Q. How old are you?
No answer.
Q. Do you seek admission to the U. S.?
A. Yes, sir.
Q. You now have the right to make a voluntary statement relative to your right to be admitted to the U. S., and if you will give us the names of two persons who knows that you have such a right they will be interviewed and their testimony taken and your right to be admitted will be carefully considered and promptly acted upon?
No answer.
Q. Have you got an attorney to represent you?
No answer.
Q. Do you wish to give the name of an attorney you want to represent you and we will notify him?
No answer.
Q. What steamer did you come over from China on?

No answer.
Q. Have you ever lived in any other country but China?
No answer.
Q. What is your father's name?
No answer.
Q. What is your mother's name?
No answer.
Q. Have you any brothers in this detention house?
No answer.
Q. Have you any uncles or cousins living in the U. S.?
No answer.
Q. Have you any blood relations living in the U. S.?
No answer.
Q. Can you give the name of any person living in the U. S. who knows you have the right to be and remain in the U. S.?
No answer.
Q. Do you know of any reason why you should not be returned to China?
No answer.
Q. Have you ever been to school.
No answer.
27 Q. Are you married?
No answer.
Q. Can you read and write the Chinese language?
No answer.
Q. What is your number in this detention house?
A. Shows ticket No. 239.
Q. Do you wish to sign this statement?
Refuses to sign.

THOMAS D'ARCY,
Immigrant Inspector.
QUAN FOY,
Chinese Interpreter.

SEPT. 26, 1903.

KING DOCK, recalled and examined by Inspector D'Darcy:

Q. Are you the same Chinaman that was examined by me in this office a few days ago?
A. Yes, sir.
Q. I show you a photograph and ask you whose picture it is.
A. It is mine.
(Photograph introduced in evidence and marked "Exhibit No. 1 of the testimony of King Dock.")

I hereby certify that the above is a correct copy of the original statement of the above applicant.

THOMAS D'ARCY,
Chinese Inspector in Charge.

(Endorsed:) Filed Nov. 19, 1903. W. S. Doolittle, clerk.

28 MALONE DETENTION HOUSE, *Sept. 23, 1903.*

Gee Kee. Inspector, Thomas D'Arcy.
No. 243. Interpreter, Quan Foy.
Class, native. Steno., H. N. Sterling.
Ex S. S. "Empress of India," Sept. 23, 1903.

Q. What is you name?
A. Gee Kee.
Q. How old are you?
A. 23.
Q. Do you seek admission to the U. S.?
A. Yes, sir; come to the U. S.
Q. You now have the right to make a voluntary statement, and if you give the names of two witnesses who knows you have the right to be in the U. S. their testimony will be taken and your case will be carefully considered and acted upon promptly.
No answer.
Q. Do you wish to give the names of any friends who you want to be interviewed relative to your case?
No answer.
Q. Are you married?
No answer.
Q. Have you any blood relations living in the U. S.?
No answer.
Q. Have you any brothers or sisters living in the U. S.?
No answer.
Q. Have you any cousins or uncles living in the U. S.?
No answer.
Q. What is your father's name?
No answer.
Q. What is your mother's name?
No answer.
Q. By what right do you seek admission to the U. S.?
No answer.
Q. Have you ever lived in any other country but China since you were born?
No answer.
Q. Did you go to school in China?
No answer.
Q. Can you read and write the Chinese language?
No answer.
Q. Who instructed you not to answer those questions?
No answer.
Q. What vessel did you come over on from China?
No answer.
Q. What is your number in this building?
A. Shows ticket No. 243.
29 Q. Will you sign this statement?
Refuses to sign.

THOMAS D'ARCY, *Immigrant Inspector.*
QUAN FOY, *Chinese Interpreter.*

SEPT. 26, 1903.

GEE KEE, recalled and examined by Inspector D'Arcy:

Q. Are you the same Chinaman that was examined by me in this office a few days ago?

A. Yes, sir.

Q. I show you a photograph and ask you whose picture it is?

A. It is mine.

(Photograph introduced in evidence and marked "Exhibit No. 1 of the Testimony of Gee Kee.")

I hereby certify that the above is a correct copy of the statement of the above-named applicant.

THOMAS D'ARCY,
Chinese Inspector in Charge.

(Endorsed:) Return of Thomas D'Arcy. Filed Nov. 10, 1903. W. S. Doolittle, clerk.

30 MALONE DETENTION HOUSE, *Sept. 23, 1903.*

Quen Jong, Inspector, Thomas D'Arcy.
No. 245, Interpreter, Quan Foy.
Class, Native. Steno., H. N. Sterling.
Ex S. S. "Empress of India," Sept. 23, 1903.

Q. What is your name?

A. Quen Jong.

Q. How old are you?

No answer.

Q. Do you now make application to be admitted to the U. S.?

A. Yes, sir.

Q. You now have the right to make a voluntary statement relative to your right to be admitted to the U. S., and if you can give the names of two persons who knows you have such a right they will be interviewed and their testimony taken, and your application will be carefully considered and promptly acted upon.

No answer.

Q. Have you any blood relations living in this detention house?

No answer.

Q. Have you any brothers in this detention house?

No answer.

Q. What district in China did you come from?

No answer.

Q. Have you ever been to school in China?

No answer.

Q. Can you read and write the Chinese language?

No answer.

Q. Can you give the name of any person who knows you have the right to be and remain in the U. S.?

No answer.

Q. Don't you know how old you are?

No answer.

Q. Are you twenty years of age?

No answer.

Q. Are you 15 years of age?
No answer.
Q. Are you 10 years of age?
No answer.
Q. Have you ever lived in any other country but China?
No answer.
Q. Are you married?
No answer.
Q. Have you any blood relations, uncles or cousins living anywhere in the U. S. that you know of?
No answer.

31 Q. What is your number of the ticket in this detention house?
A. Shows ticket No. 245.

Q. Do you wish to sign this statement?
Refuses to sign.

THOMAS D'ARCY,
Immigrant Inspector.
QUAN FOY,
Chinese Inspector.

SEPT. 26, 1903.

QUEN JONG, recalled and examined by Inspector D'Arcy:

Q. Are you the same Chinaman that was examined in this office by me a few days ago?
A. Yes, sir.
Q. I show you a photograph and ask you whose picture it is?
A. It is mine.
(Photograph introduced in evidence and marked "Exhibit No. 1 of the testimony of Quen Jong.")

I hereby certify that the above is a correct copy of the original statement of the above applicant.

THOMAS D'ARCY,
Chinese Inspector in charge.

(Endorsed:) Return of Thomas D'Arcy. Filed Nov. 10, 1903. W. S. Doolittle, clerk.

32 MALONE DETENTION HOUSE, *Sept. 23, 1903.*

Quong Sang, Inspector, Thomas D'Arcy.
No. 246, Interpreter, Quan Foy.
Class, Native. Steno., H. N. Sterling.
Ex S. S. "Empress of India," Sept. 23, 1903.

Q. What is your name?
A. Quong Sang.
Q. How old are you?
A. No answer. (Appears to be about 28 years old.)
Q. Do you now make application to be admitted to the United States?
A. Yes, sir.
Q. By what right do you seek admission to the U. S.?
No answer.

Q. You now have the right to make a voluntary statement relative to your being admitted to the U. S., and if you can give the names of two witnesses, they will be interviewed and their testimony taken, and your application will be carefully considered and promptly acted upon.

No answer.

Q. Have you any blood relations in this detention house?

No answer.

Q. Have you any uncles in this detention house?

No answer.

Q. Have you got an attorney to look after your case?

No answer.

Q. Do you wish to give the name of an attorney that you would like to look after your case, and we will notify him?

No answer.

Q. Do you wish to give the name of any person who knows that you have the right to be in the U. S.?

No answer.

Q. What district in China did you come from?

No answer.

Q. Have you ever been to school in China?

No answer.

Q. Can you read and write the Chinese language?

No answer.

Q. Are you married?

No answer.

Q. How old are you?

No answer.

Q. Have you any uncles or cousing living in the U. S.?

No answer.

33 Q. What part of the U. S. do you expect to go to when you leave here?

A. N. Y.

Q. Have you any friends in N. Y.?

No answer.

Q. Can you give the name of any person living in New York who knows you have the right to be in the U. S.?

No answer.

Q. What is your number in this detention house?

A. Shows ticket No. 246.

Q. Do you wish to sign this statement?

No answer. Refuses to sign.

THOMAS D'ARCY, *Immigrant Inspector.*
QUAN FOY, *Chinese Interpreter.*

SEPT. 26, 1903.

QUONG SANG recalled and examined by Inspector D'Arcy:

Q. Are you the same Chinaman that was examined by me in this office a few days ago?

A. Yes, sir.

Q. I show you a photograph and ask you whose picture it is?

A. It is mine.

(Photograph introduced in evidence and marked "Exhibit No. 1 of the testimony of Quong Sang.")

I hereby certify that the above is a correct copy of the original statement of the above applicant.

(Signed) THOMAS D'ARCY,
Chinese Inspector in Charge.

(Endorsed:) Return of Thomas D'Arcy. Filed Nov. 10, 1903. W. S. Doolittle, clerk.

34 MALONE DETENTION HOUSE, *Sept. 23, 1903.*

Ying Foo. Inspector, Thomas D'Arcy.
No. 247. Interpreter, Quan Foy.
Class, Native. Steno., H. N. Sterling.
Ex. S. S. "Empress of China," Sept. 23, 1903.

Q. What is your name?
A. Ying Foo.
Q. How old are you?
A. 21 years old.
Q. Do you now seek admission to the U. S.?
A. Yes, sir.
Q. You now have the right to make a voluntary statement relative to your being admitted to the U. S., and if you can give the names of two witnesses that knows you have such a right, they will be interviewed, and their testimony taken, and your application will be carefully considered and promptly acted upon?
No answer.
Q. Have you any blood relations in this detention house?
No answer.
Q. Have you any uncles or cousins in this detention house?
No answer.
Q. Have you got an attorney to represent you in this matter?
No answer.
Q. Do you wish to give the name of an attorney who you want to represent you and we will notify him?
No answer.
Q. Can you give the name of any person who knows you have the right to be and remain in the U. S.?
No answer.
Q. What district in China did you come from?
No answer.
Q. Have you ever been to school?
No answer.
Q. What is your father's name?
No answer.
Q. What is your mother's name?
No answer.
Q. Can you read and write the Chinese language?
No answer.
Q. Are you married?
A. No answer.

Q. Have you any brothers, cousins, or uncles living in the U. S.?
A. No answer.
Q. What part of the U. S. do you expect to go when you leave here?
A. No answer.
35 Q. What is your number in this detention house?
A. Shows ticket No. 247.
Q. Do you wish to sign this statement?
A. Refuses to sign.

THOMAS D'ARCY, *Immigrant Inspector.*
QUAN FOY, *Chinese Interpreter.*

SEPT. 26, 1903.

YING FOO, recalled and examined by Inspector D'Arcy:
Q. Are you the same Chinaman that was examined by me in this office a few days ago?
A. Yes, sir.
Q. I show you a photograph and ask you whose picture it is?
A. It is mine.
(Photograph introduced in evidence and marked "Exhibit No. 1 of the testimony of Ying Foo.")
I hereby certify that the above is a correct copy of the original statement of the above applicant.
(Signed) THOMAS D'ARCY,
Chinese Inspector in Charge.

(Endorsed:) Return of Thomas D'Arcy. Filed Nov. 10, 1903. W. S. Doolittle, clerk.

36 MALONE DETENTION HOUSE, *Sept 23, 1903.*

Chong Yuet. Inspector, Thomas D'Arcy.
No. 248. Interpreter, Quan Foy.
Class, Native. Steno., H. N. Sterling.
Ex. S. S. "Empress of India," Sept. 23, 1903.
Q. What is your name?
A. Chong Yuet.
Q. How old are you?
A. 25 years of age.
Q. Do you now make application to be admitted to the U. S.?
A. Yes, sir.
Q. You now have the right to make a voluntary statement relative to your being admitted to the U. S., and if you can give the names of two persons who knows you have the right to be a' remain in the U. S., they will be interviewed, and their testimony taken, and your application will be carefully considered and promptly acted upon.
No answer.
Q. Have you any blood relations in this detention house?
No answer.
Q. Have you any uncles or cousins in this detention house?
No answer.
Q. Have you got an attorney to represent you in this matter?
No answer.

Q. Do you wish to give us the name of an attorney who you want to represent you and we will notify him?
No answer.
Q. Did you ever go to school in China?
No answer.
Q. Can you read and write the Chinese language?
No answer.
Q. Can you give the name of any person who knows you have the right to be and remain in the U. S.?
No answer.
Q. What is your father's name?
No answer.
Q. What is your mother's name?
No answer.
Q. Have you any brothers, uncles, or cousins living in the U. S. that you know of?
No answer.
Q. Are you married?
No answer.
Q. What district in China do you come from?
No answer.
37 Q. What is the name of the steamer you came over on?
No answer.
Q. Where do you expect to go if you are not admitted to the U. S?
No answer.
Q. What is your number in this detention house?
A. Shows ticket No. 248.
Q. Do you wish to sign this statement?
Refuses to sign.

THOMAS D'ARCY,
Immigrant Inspector.
QUAN FOY,
Chinese Interpreter.

SEPT. 26, 1903.

CHONG YUET, recalled and examined by Inspector D'Arcy:

Q. Are you the same Chinaman that was examined by me in this office a few days ago?
A. Yes, sir.
Q. I show you a photograph and ask you whose picture it is?
A. It is mine.
(Photograph introduced in evidence and marked "Exhibit No. 1 of the testimony of Chong Yuet.")
I hereby certify that the above is a correct copy of the original statement of the above applicant.
(Signed) THOMAS D'ARCY,
Chinese Inspector in Charge.

(Endorsed:) Return of Thomas D'Arcy. Filed Nov. 10, 1903 W. S. Doolittle, clerk.

Hong (Quai) Yong. Inspector, Thomas D'Arcy.
No. 249. Interpreter, Quan Foy.
Class, Native. Steno., H. N. Sterling.
Ex S. S. "Empress of India," Sept. 23, 1903.

Q. What is your name?
A. Hong Quai.
Q. How old are you?
A. 23.
Q. You now have the right to make a voluntary statement relative to your being admitted to the United States, and if you can give the names of two persons who knows you have such a right their testimony will be taken and your application will receive prompt attention?
No answer.
Q. Do you now make application to be admitted to the U. S.?
A. Yes, sir.
Q. Do you wish to make a statement?
No answer.
Q. How many years have you lived in China?
A. I couldn't remember.
Q. Have you got a native-born paper with you?
No answer.
Q. Did you have any letters from any of your friends in the U. S. before you left China telling you to come here?
No answer.
Q. Have you any brothers in this detention house?
No answer.
Q. Are you married?
No answer.
Q. What village in China did you live in?
No answer.
Q. Have you any uncles living in the U. S.?
A. I don't know.
Q. Where is your father living?
No answer.
Q. Is he in China or the U. S.?
No answer.
Q. Where do you expect to go when you leave here?
No answer.
Q. What city in the U. S. have you any friends, Boston, New York, Baltimore, Washington, Penn., Rhode Island, Conn.?
A. New York.
Q. What is the name of your friend in New York?
No answer.

39 Q. Do you remember?
No answer.

Q. Do you wish to make any further statement relative to your coming to the U. S.?
No answer.
Q. What is your number in this detention house?

A. Shows ticket 249.
Q. What floor do you live on in the building?
No answer.
Q. Will you sign this statement?
Refuses to sign.

THOMAS D'ARCY,
Immigrant Inspector.
QUAN FOY,
Chinese Interpreter.

SEPT. 26, 1903.

HONG QUAI, recalled and examined by Inspector D'Arcy:

Q. Are you the same Chinaman that was examined by me in this office a couple of days ago?
A. Yes, sir.
Q. I show you a photograph and ask whose picture it is?
A. It is mine.
(Photograph introduced in evidence and marked "Exhibit No. 1 of the testimony of Hong Quai.")
I hereby certify that the above is a correct copy of the original statement of the above applicant.
(Signed) THOMAS D'ARCY,
Chinese Inspector in Charge.

(Endorsed:) Return of Thomas D'Arcy. Filed Nov. 10, 1903. W. S. Doolittle, clerk.

40 MALONE DETENTION HOUSE, *Sept. 23, 1903.*

Sing Kee. Inspector, Thomas D'Arcy.
No. 250. Interpreter, Quan Foy.
Class, native. Steno., H. N. Sterling.
Ex S. S. "Empress of India," Sept. 23, 1903.

Q. What is your name?
A. Sing Kee.
Q. How old are you?
No answer.
Q. Do you now seek admission to the United States?
A. Yes, sir.
Q. You now have the right to make any voluntary statement you may desire, and if you can give us the names of two persons who knows you have the right to be admitted to the United States they will be interviewed and their testimony taken, and your application will be carefully considered and acted upon promptly?
No answer.
A. Have you any blood relations in the detention house?
No answer.
Q. Have you any uncles or cousins in this detention house?
No answer.
Q. Have you an attorney to represent you in this matter?
No answer.

Q. Do you wish to give us the name of an attorney to represent you, and we will notify him?

No answer.

Q. Are you married?

No answer.

Q. Can you give the name of any person who knows you have the right to be and remain in the U. S.?

No answer.

Q. Where do you expect to go when you leave here?

A. New York.

Q. Have you got anybody in N. Y. whose name you can give?

No answer.

Q. Can you read and write the Chinese language?

No answer.

Q. Have you ever lived in any other country but China?

No answer.

Q. Do you know any reason why you should not be returned to China?

No answer.

41 Q. Will you sign this statement?

Refuses to sign.

Q. What is your number in this detention house?

A. Shows ticket No. 250.

THOMAS D'ARCY, *Immigrant Inspector.*
QUAN FOY, *Chinese Interpretor.*

SEPT. 26, 1903.

SING KEE, recalled and examined by Inspector D'Arcy:

Q. Are you the same Chinaman that was examined by me in this office a few days ago?

A. Yes, sir.

Q. I show you a photograph and ask you whose picture it is?

A. It is mine.

(Photograph introduced in evidence and marked "Exhibit No. 1 of the testimony of Sing Kee.")

I hereby certify that the above is a correct copy of the original statement of the above applicant.

(Signed) THOMAS D'ARCY,
Chinese Inspector in Charge.

(Endorsed:) Return of Thomas D'Arcy. Filed Nov. 10, 1904. W. S. Doolittle, Clerk.

42 MALONE DETENTION HOUSE, *Sept. 23, 1903.*

Hog (Hop) Toy, Inspector, Thomas D'Arcy.
No. 251, Interpreter, Quan Foy.
Class, Native. Steno., H. N. Sterling.
Ex S. S. "Empress of India," Sept. 23, 1903.

Q. What is your name?

A. Hop Toy.

Q. How old are you?

A. 28.

Q. What steamer did you come over from China on?
A. "Empress of India."
Q. How many days ago since you landed at Van Couver?
No answer.
Q. When did you land in Montreal?
A. Last night.
Q. Do you seek admission to the U. S.?
A. Yes, sir.
Q. You now have the right to make a voluntary statement relative to your right to be and remain in the U. S., and if you can give the names of two persons who knows you have such a right, their statements will be taken and your application will be considered carefully and acted upon promptly.
No answer.
Q. Do you want to give any names?
No answer.
Q. Where do you expect to go when you leave here?
A. N. Y.
Q. Have you any friends in New York?
A. Yes, sir.
Q. What is their names?
No answer.
Q. What district in China did you come from?
No answer.
Q. Have you any blood relations living in the U. S.?
No answer.
Q. Have you any uncles or cousins living in the U. S.?
A. Yes, sir.
Q. Where are they living?
A. N. Y.
Q. What is their business?
A. 22 Mott street; he live there.
Q. What is his name?
A. Ng Hong Foon.
Q. What relation is he to you?
A. Uncle.
Q. When did you last see him?
A. Several years—I couldn't remember how many.
Q. Where did you see him at that time?
A. I saw him in N. Y.
Q. How old were you at that time?
A. No answer.
43 Q. Do you remember?
A. No.
Q. How many years since you have been in New York?
A. I stay there 7 or 8 years.
Q. How many years ago since you went back to China?
A. Over 10 years ago.
Q. Where did you sail from when you went back to China?
A. I couldn't remember.
Q. Who went back to China with you at that time?

A. I couldn't remember.
Q. What is the name of the steamer you went back to China on?
A. I couldn't remember.
Q. What were you working at in New York before you left there?
A. Laundry.
Q. How many years did you work in the laundry?
A. Several years.
Q. Did you deposit any papers in the Custom-House anywhere when you went back to China?
A. No, sir.
Q. Where were you born?
A. N. Y.
Q. What street?
A. 22 Mott street.
Q. Did you ever have a certificate of birth?
A. Yes, sir.
Q. Where is that certificate now?
A. Lost it.
Q. What is your father's name?
A. He is dead now.
Q. Where did he die?
A. China.
Q. How many years ago since he died?
A. Couldn't remember.
Q. Were you in China when he died?
A. Yes, sir.
Q. Then he died within the last ten years?
A. I couldn't remember.
Q. Has your uncle who lives at 22 Mott St., ever been back to China?
A. No, sir.
Q. What district in China did you come from this last time?
A. Don't know.
Q. What did you do during the ten years you were in China?
A. No answer.
Q. When did you first come to the U. S.?
A. I couldn't remember.
Q. Were you back to China before you went back ten years ago?
A. No, sir.
Q. Can you give the name of any other person who knows you were born in N. Y.?
A. No, sir.
Q. Has your uncle, who lives at 22 Mott St., any photograph of you when you were born?
A. No.
44 Q. How many years ago since your uncle last saw you?
A. I told you before.
Q. Was your uncle present when you were born?
A. No, sir.
Q. Was your mother in this country at the time you were born?
A. Yes, sir.

Q. Was your father present at the time you were born?
A. No, he had gone somewhere.
Q. Was he living in N. Y. at that time?
A. Yes, sir.
Q. Can you give the name and address of any laundries you worked in in N. Y., before you went back to China?
A. I couldn't remember.
Q. You remember something about the streets in N. Y., if you were born there and did not leave there until you were 19 years of age, don't you?
A. Don't know.
Q. Can you give me the names of any avenues or streets in N. Y.?
A. No.
Q. Do you know the street it is that runs north and south from Mott street, as you go out on the avenue?
A. I couldn't remember.
Q. Would you know the name if you heard it?
Q. Do you know where Third avenue is in New York?
A. No.
Q. Do yo know where Harlem is in N. Y.?
A. No.
Q. Do you know where Brooklyn is in N. Y.?
A. No.
Q. Do you know where Doyer street is in N. Y.?
A. No.
Q. How many years did you live at 22 Mott street?
A. Forget it.
Q. Were you living there when you went back to China 10 years ago?
A. Yes, sir.
Q. How many years before you went back did you live there, if you remember?
A. I couldn't remember.
Q. Did you ever hear of the Brooklyn Bridge in N. Y.?
A. I can't remember.
Q. Were you ever in Brooklyn?
A. No, sir.
Q. Did you ever ride on the elevated railroad in N. Y.?
A. Yes; but I forget when.
45 Q. What process did you go through to secure a ticket to ride on the elevated railroad?
A. I couldn't remember.
Q. Is there any more that you want to say relative to your case?
A. No, sir.
Q. You don't know the name of any other person you can give who you wished to be interviewed relative to your case?
A. I don't know.
Q. Did you live in a back room at 22 Mott street?
A. Room 4.
Q. What did they keep in the front room of the building and on the ground floor?
A. Chinese lottery company.

Q. What was the name of the man that run it, if you know?
A. I couldn't remember.
Q. How many partners were there in that lottery business, if you remember?
A. I couldn't remember.
Q. What was kept at No. 20 Mott street?
A. Don't know.
Q. What was kept at 24 Mott street, if you remember?
A. I couldn't remember.
Q. Is there any other business conducted in Mott street except those conducted by Chinamen?
A. They may have some; I don't know.
Q. What is your number in this building?
A. 251.
Q. Do you wish to sign this statement?
"Hop Toy" signed by witness in Chinese characters on stenographer's minutes.

SEPT. 26, 1903.

HOP TOY recalled and examined by Inspector D'Arcy:

Q. Are you the same Chinaman that was examined by me in this office a few days ago?
A. Yes, sir.
Q. I show you a photograph and ask you whose picture it is?
A. It is mine.
(Photograph introduced in evidence and marked "Exhibit No. 1, of the testimony of Hop Toy.")
I hereby certify that the above is a correct copy of the original statement of the above applicant.

THOMAS D'ARCY,
Chinese Inspector in Charge.

(Endorsed:) Return of Thomas D'Arcy. Filed Nov. 10, 1903. W. S. Doolittle, clerk.

46 MALONE DETENTION HOUSE, SEPT. 23, 1902.

Due Ark, Inspector, Thomas D'Arcy.
No. 252, Interpreter, Quan Foy.
Class, native. Steno., H. N. Sterling.
Ex S. S. "Empress of India," Sept. 23, 1903.

Q. What is your name?
A. Due Ark.
Q. How old are you?
No answer.
Q. Do you now seek admission to the United States?
A. Yes, sir.
Q. You now have the right to make a voluntary statement relative to your being admitted to the U. S., and if you can give the names of two persons who knows you have such a right they will be interviewed and their testimony taken, and your application will be carefully considered and promptly acted upon.
No answer.

Q. Do you wish to give the names of any persons who knows you have the right to be admitted to the U. S.?
No answer.
Q. What district in China did you come from?
A. Born in the U. S.
Q. In what city in the U. S. were you born?
No answer.
Q. Who knows you were born in the United States?
No answer.
Q. Have you ever lived in any other country but China?
No answer.
Q. Did you ever go to school in China?
No answer.
Q. Can you read and write the Chinese language?
No answer.
Q. Are you married?
No answer.
Q. Have you any brothers in this detention house?
No answer.
Q. Have you any blood relations in this detention house?
No answer.
Q. Can you give the names of any persons living in the U. S. who knows you have the right to be here?
No answer.
47 Q. Have you any uncles or cousins living in New York?
No answer.
Q. Where is your father living now, if you know?
A. No answer.
Q. Can you give the name of the person who has written you a letter telling you come to the U. S.?
A. No answer.
Q. Do you know any reason why you should not be returned to China?
No answer.
Q. What is your number in this building?
A. 252.
Q. Will you sign this statement?
Refuses to sign.

THOMAS D'ARCY,
Immigrant Inspector.
QUN FOY,
Chinese Interpreter.

SEPT. 26, 1903.

DUE ARK, recalled and examined by Inspector D'Arcy:

Q. Are you the same Chinaman that was examined by me in this office a few days ago?
A. Yes, sir.
Q. I show you a photograph and ask you whose picture it is?
A. It is mine.

(Photograph introduced in evidence and marked "Exhibit No. 1 of the testimony of Due Ark.")

I hereby certify that the above is a correct copy of the original statement of the above applicant.

(Signed) THOMAS D'ARCY,
Chinese Inspector in Charge.

(Endorsed:) Return of Thomas D'Arcy. Filed Nov. 10, 1903. W. S. Doolittle, clerk.

48 MALONE DETENTION HOUSE, *Sept. 24, 1903.*

Hong Tai, Inspector, Thomas D'Arcy.
No. 253, Interpreter, Quan Foy.
Class, native, Steno., H. N. Sterling.
Ex S. S. "Empress of India," Sept. 23, 1903.

Q. What is your name?
A. Hong Tai.
Q. How old are you?
No answer.
Q. Are you ten years old?
No answer.
Q. Are you 15 years old?
No answer.
Q. Are you five years old?
No answer.
Q. Are you 30 years old?
No answer.
Q. Do you now make application to enter the U. S.?
A. Yes, sir.
Q. You now have the right to make a voluntary statement relative to your being admitted to the U. S., and if you can give us the name of two witnesses who know you have such a right, their testimony will be taken and your case will be promptly acted upon.
No answer.
Q. Have you any witnesses whom you desire to testify in behalf of your right to be admitted to the U. S.?
No answer.
Q. Have you any blood relations in this detention house?
No answer.
Q. Have you any brothers in this detention house?
No answer.
Q. Have you any brothers or uncles in the U. S.?
No answer.
Q. Where is your father living?
No answer.
Q. Have you ever been in the U. S.?
No answer.
Q. Are you married?
No answer.
Q. What is your number in this detention house?
Q. What is your number?
Shows ticket No. 253.

Q. Have you attended school?
No answer.
Q. Can you read and write the Chinese language?
No answer.
Q. Will you sign this statement?
Refuses to sign.

THOMAS D'ARCY,
Immigrant Inspector.
QUAN FOY,
Chinese Interpreter.

49 SEPT. 26, 1903.

HONG TAI, recalled and examined by Inspector D'Arcy:

Q. Are you the same Chinaman that was examined by me in this office a couple of days ago?
A. Yes, sir.
Q. I show you a photograph, and ask you whose picture it is?
A. It is mine.
(Photograph introduced in evidence and marked "Exhibit No. 1 of the testimony of Hong Tai.")

I hereby certify that the above is a correct copy of the original statement of the above applicant.
(Signed) THOMAS D'ARCY,
Chinese Inspector in Charge.

(Endorsed:) Return of Thomas D'Arcy. Filed Nov. 10, 1903. W. S. Doolittle, clerk.

50 MALONE DETENTION HOUSE, *Sept. 24, 1903.*

Lum Chong, Inspector, Thomas D'Arcy.
No. 254. Interpreter, Quan Foy.
Class, Native. Steno., H. N. Sterling.
Ex S. S. "Empress of India," September 23, 1903.

Q. What is your name?
A. Lum Chong.
Q. How old are you?
A. No answer. (Appears to be about 20.)
Q. Do you now seek admission to the U. S.?
A. Yes, sir.
Q. You now have the right to make a voluntary statement relative to your being admitted to the U. S., and if you can give the names of two persons who know you have such a right, their testimony will be taken, and your application will receive prompt attention.
No answer.
Q. Have you any blood relations in this detention house?
No answer.
Q. Have you any brothers or uncles or cousins living in the U. S.?
No answer.
Q. Upon what do you base your application to enter the U. S.?
No answer.
Q. Have you ever been to school in China?

No answer.
Q. Can you read and write the Chinese language?
No answer.
Q. Where do you expect to go when you leave here?
No answer.
Q. Have you any friends living in the United States?
No answer.
Q. Are you married?
No answer.
Q. Have you got an attorney to represent you in this matter?
No answer.
Q. Do you wish to give the name of an attorney who you want to represent you, and we will notify him?
No answer.
Q. What is the name of the steamer you came over from China on?
No answer.
Q. What is your number in this detention house?
A. Shows ticket No. 254.
51 Q. Can you write?
A. No answer.
Q. Will you sign this statement?
Refuses to sign.

THOMAS D'ARCY,
Immigrant Inspector.
QUAN FOY,
Chinese Interpreter.

SEPT. 26, 1904.

LUM CHONG, recalled and examined by Inspector D'Arcy:

Q. Are you the some Chinaman that was examined in this office by me a couple of days ago?
A. Yes, sir.
Q. I show you a photograph and ask you whose picture it is?
A. It is mine.
(Photograph introduced in evidence and marked "Exhibit No. 1 of the testimony of Lum Chong.")
I hereby certify that the above is a correct copy of the original statement of the above applicant.

(Signed) THOMAS D'ARCY,
Chinese Inspector in Charge.

(Endorsed:) Return of Thomas D'Arcy. Filed Nov. 10, 1903. W. S. Doolittle, clerk.

52 MALONE DETENTION HOUSE, *Sept. 24, 1903.*

Sang Chong, Inspector, Thomas D'Arcy.
No. 255. Interpreter, Quan Foy.
Class, Native. Steno., H. M. Sterling.
Ex S. S. "Empress of India," Sept. 23, 1903.

Q. What is your name?
A. Sang Chong.
Q. H'old are you?

A. No answer. (Appears about 25.)
Q. Do you now seek admission to the United States?
A. Yes, sir.
Q. Upon what do you base your right to be admitted to the U. S.?
No answer.
Q. You now have the right to make a voluntary statement relative to your right to be admitted to the United States, and if you can give the names of two persons who know you have such a right, their testimony will be taken, and your case will receive prompt attention of the officers.
No answer.
Q. Do you wish to make a statement relative to your being admitted to U. S.?
No answer.
Q. Have you got an attorney to represent you in this matter?
No answer.
Q. Do you wish to give the name of an attorney who you wish to represent you and we will notify him?
No answer.
Q. Have you any blood relations in this detention house?
No answer.
Q. Have you any brothers, uncles, or cousins living in the U. S.?
No answer.
Q. Have you ever been to school?
No answer.
Q. Can you read and write the Chinese language?
No answer.
Q. What is your father's name?
A. No answer.
Q. What is your mother's name?
No answer.
Q. Do you know any persons in the world?
No answer.
Q. Where do you expect to go when you leave here?
No answer.
Q. Are you married?
No answer.
53 Q. Have you any brothers or sisters living in China or the U. S.?
No answer.
Q. What is your number in the detention house?
A. Shows ticket No. 235.
Q. Will you sign this statement?
Refuses to sign.

THOMAS D'ARCY, *Chinese Inspector.*
QUAN FOY, *Chinese Interpreter.*

SEPT. 26, 1903.

SANG CHONG, recalled and examined by Inspector D'Arcy.
Q. Are you the same Chinaman that was examined by me in this office a couple of days ago?
A. Yes, sir.
Q. I show you a photograph, and ask whose picture it is?

A. It is mine.

(Photograph introduced in evidence and marked "Ex. 1 of the testimony of Sang Chong.")

I hereby certify that the above is a correct copy of the original statement of the above applicant.

(Signed) THOMAS D'ARCY,
Chinese Inspector, in Charge.

(Endorsed:) Return of Thomas D'Arcy. Filed Nov. 10, 1903. W. S. Doolittle, clerk.

54 MALONE DETENTION HOUSE, *Sept. 24, 1903.*

Wing Chuey, Inspector, Thomas D'Arcy.
No. 256. Interpreter, Quan Foy.
Class, native. Steno., H. N. Sterling.
Ex. S. S. "Empress of India," Sept. 23, 1903

Q. What is your name?
A. Wing Chuey.
Q. Do you now make application to come to the U. S.?
A. Yes, sir.
Q. How old are you?
A. 28.
Q. You now have the right to make a voluntary statement relative to your right to be admitted to the U. S., and if you can give the names of two persons who know you have such a right, their testimony will by taken and your case will receive prompt attention of the officer?
No answer.
Q. What is your father's name?
No answer.
Q. Where does your father live?
No answer.
Q. Do you know whether or not he is living in China?
No answer.
Q. Do you know whether or not he is living in the U. S.?
No answer.
Q. Can you give the name of any person in the U. S. who knows that you have the right to be admitted?
No answer.
Q. Have you any brothers in this detention house?
No answer.
Q. Do you know whether you have any brothers in this building or not?
No answer.
Q. Have you any brothers living in China?
No answer.
Q. Do you live all alone in China?
No answer.
Q. What steamer did you come over from China on?
No answer.
Q. When did you come to this detension house?
No answer.

Q. By what right do you seek admission to the U. S.?
No answer.
Q. Have you ever lived in any other country but China?
No answer.
55 Q. Do you know any reason why you should not be returned to China?
No answer.
Q. Are you married?
No answer.
Q. What is your number in this detention house?
A. Shows ticket No. 256.
Witness refused to sign this statement.

THOMAS D'ARCY,
Immigrant Inspector.
QUAN FOY,
Chinese Interpreter.

SEPTEMBER 26, 1903.

WING CHUEY, recalled and examined by Inspector D'Arcy:
Q. Are you the same Chinaman that was examined by me in this detention house a couple of days ago?
A. Yes, sir.
Q. I show you a photograph and ask you whose picture it is?
A. It is mine.
(Photograph introduced in evidence and marked "Exhibit No. 1 of the testimony of Wing Chuey.")
I certify that the above is a correct copy of the original statement of the above applicant.

(Signed) THOMAS D'ARCY,
Chinese Inspector in Charge.

(Endorsed:) Return of Thomas D'Arcy. Orig. Filed Nov. 10, 1903. W. S. Doolittle, clerk.

56 MALONE DETENTION HOUSE, *Sept. 24, 1903.*

Ham Sang, Inspector, Thomas D'Arcy.
No. 257, Interpreter, Quan Foy.
Class, Native. Steno., H. N. Sterling.
Ex S.S. "Empress of India," Sept. 23, 1903.

Q. What is your name?
A. Hong Sang.
Q. Do you now make application to enter the United States?
A. Yes, sir.
Q. How old are you?
No answer.
Q. When did you return to China last?
No answer.
Q. Did you come from China here?
No answer.
Q. Upon what ground do you base your right to enter the U. S?
No answer.

Q. Have you any witness that you want to testify in your favor on the question of your right to enter the U. S.?

No answer.

Q. Why did you refuse to answer the questions that are being put to you?

No answer.

Q. What steamer did you come over from China on?

A. "Empress of India."

Q. Did you have any brothers come over on that steamer with you?

No answer.

Q. How old were you when you left this country to go to China?

A. Don't know how old I am when I left.

Q. Do you remember leaving?

No answer.

Q. Who told you you left this country and went to China?

No answer.

Q. What was your father's name?

No answer.

Q. Have you any uncles or cousins living in the U. S.?

No answer.

Q. How old are you?

No answer.

Q. Are you fifteen years old?

No answer. (Witness appears to be about 22.)

Q. Where do you expect to go when you leave here?

No answer.

Q. Do you expect to go back to Montreal?

A. United States.

Q. What city in the United States?

No answer.

57 Q. Have you any letter or paper on your person showing you have the right to be in the U. S.?

No answer.

Q. Can you read and write the Chinese language?

No answer.

Q. Do you wish to sign this statement?

No answer.

Q. What is your number in this detention house?

A. Shows ticket No. 257.

THOMAS D'ARCY,
Immigrant Inspector.

QUAN FOY,
Chinese Interpreter.

SEPTEMBER 26, 1903.

HAM SANG recalled and examined by Inspector D'Arcy:

Q. Are you the same Chinaman that was examined by me in this office a couple of days ago?

A. Yes, sir.

Q. I show you a photograph, and ask you whose picture it is?

A. It is mine.

(Photograph introduced in evidence and marked "Exhibit No. 1 of the testimony of Ham Sang.")

I hereby certify that the above is a correct copy of the original statement of the above applicant.

(Signed) THOMAS D'ARCY,
Chinese Inspector in Charge.

(Endorsed:) Return of Thomas D'Arcy. Filed Nov. 10, 1903. W. S. Doolittle, clerk.

58 MALONE DETENTION HOUSE, *Sept. 24, 1903.*

That (Shet) Shong. Inspector, Thomas D'Arcy.
No. 258. Interpreter, Quan Foy.
Class, Native. Steno., H. N. Sterling.
Ex S. S. "Empress of India," Sept. 23, 1903.

Q. What is your name?
A. That Shong.
Q. How old are you?
A. Shakes his head "no." (Appears about 18.)
Q. Do you now make application to come to the U. S.?
No answer.
Q. Do you want to go back to China?
A. Shakes his head "no."
Q. You now have the right to make a voluntary statement relative to your being admitted to the U. S., and if you can give the names of two persons who knows you have such a right, their testimony will be taken, and your case will be carefully considered and promptly acted upon.
Q. Do you wish to give the names of any witnesses who you want to be examined relative to your being admitted to the U. S.?
No answer.
Q. Do you know any person in the U. S.?
No answer.
Q. Have you an attorney to represent you?
No answer.
Q. Do you wish to give the name of an attorney to represent you and we will notify him?
No answer.
Q. Have you any brothers in this detention house?
No answer.
Q. By what right do you seek admission to the U. S.?
No answer.
Q. Can you give the name of any country but China that you have ever lived in?
No answer.
Q. Can you read and write the Chinese language?
No answer.
Q. What kind of work did you do when you were in China?
No answer.
Q. From what district in China did you come from?
No answer.
59 Q. What is the name of the village in China you lived in?
No answer.

Q. Do you know any reason why you should not be returned to China?
No answer.
Q. What is your number in this detention house?
A. Shows ticket No. 258.
Q. Will you sign this statement?
A. Shakes head "no."

THOMAS D'ARCY,
Immigrant Inspector.
QUAN FOY,
Chinese Interpreter.

SEPT. 26, 1903.

THAT SHONG recalled and examined by Inspector D'Arcy:

Q. Are you the same Chinaman that was examined by me in this office a couple of days ago?
A. Yes, sir.
Q. I will show you a photograph and ask you whose picture it is?
A. It is mine.
(Photograph introduced in evidence and marked "Exhibit No. 1 of the testimony of That Shong."
I hereby certify that the above is a correct copy of the original statement of the above applicant.
(Signed) THOMAS D'ARCY,
Chinese Inspector in Charge.

(Endorsed:) Return of Thomas D'Arcy. Filed Nov. 10, 1903. W. S. Doolittle, clerk.

60 MALONE DETENTION HOUSE, *Sept. 24, 1903.*
Do Lin. Inspector, Thomas D'Arcy.
No. 259. Interpreter, Quan Foy.
Class, Native. Steno., H. N. Sterling.
Ex S. S. "Empress of India," Sept. 23, 1903.

Q. What is your name?
A. Do Lin.
Q. How old are you?
No answer. (Appears about 26 years old.)
Q. Do you now make application to enter the U. S.?
A. Yes, sir.
Q. You now have the right to make a voluntary statement relative to your right to be admitted to the U. S., and if you can give the names of two persons who knows you have such a right their testimony will be taken and your case will receive prompt attention.
No answer.
Q. Do you wish to give the names of any witnesses you want to be interviewed relative to your right to be in the U. S.?
No answer.
Q. When did you receive the scar on your nose?
No answer.
Q. How many years ago?
No answer.

Q. Has that mark always been there?
No answer.
Q. By what right do you seek admission to the U. S.?
No answer.
Q. Are you married?
No answer.
Q. Have you got any brothers in this detention house?
No answer.
Q. What was the name of the steamer you came over from China on?
No answer.
Q. When did you arrive at this detention house?
No answer.
Q. What floor in the building are you sleeping on?
No answer.
Q. Can you give the name of any person in the U. S.?
No answer.
Q. What is your number in this detention house?
A. Shows ticket No. 259.
61 Q. Do you wish to sign this statement?
Refuses to sign.

THOMAS D'ARCY, *Immigrant Inspector.*
QUAN FOY, *Chinese Interpreter.*

SEPT. 26, 1903.

DO LIN, recalled and examined by Inspector D'Arcy:

Q. Are you the same Chinaman that was examined by me in this office a couple of days ago?
A. Yes, sir.
Q. I show you a photograph, and ask you whose picture it is?
A. It is mine.
(Photograph introduced in evidence and marked "Exhibit No. 1 of the testimony of Do Lin.")

I hereby certify that the above is a correct copy of the original statement of the above applicant.

(Signed) THOMAS D'ARCY,
Chinese Inspector in Charge.

(Endorsed:) Return of Thomas D'Arcy. Filed Nov. 10, 1903. W. S. Doolittle, clerk.

62 MALONE DETENTION HOUSE, *Sept. 23, 1903.*

Jane (Lop) Lys. Inspector, Thomas D'Arcy.
No. 260. Interpreter, Quan Foy.
Class, native. Steno., H. N. Sterling.
Ex S. S. "Empress of India," Sept. 23, 1903.

Q. What is your name?
A. Jane Lop.
Q. Can you write it?
A. No.
Q. Do you understand English a little bit?

A. No, sir.
Q. How many years ago since you were in this country before?
A. I couldn't remember.
Q. How old were you when you left this country to go to China?
A. Don't know.
Q. Were you two years old?
A. Don't know.
Q. Do you remember when you left this country to go to China?
A. Don't know.
Q. Were you ever in this country before?
A. Born in the U. S.
Q. In what city were you born in the U. S.
A. *Couldn't remember.*
Q. Do you remember whether it was N. Y. or San Francisco, California?
A. Don't know.
Q. You now have the right to make a voluntary statement relative to your being admitted to the U. S., and if you can give the names of two persons who knows you have such a right to be in the U. S. their testimony will be taken and your case will receive prompt attention?
No answer.
Q. Do you now make application to enter the United States?
A. Yes, sir.
Q. How old are you?
A. 23. (Witness appears to be 35.)
Q. Don't you think you look a little older than 23?
A. Yes, I grows older.
Q. How do you account for your looking older than 23; have you been sick?
No answer.
63 Q. What kind of work did you do in China?
No answer.
Q. What do you expect to work at in the U. S.?
No answer.
Q. Are you a cook?
No answer.
Q. Are you married?
A. Yes, sir.
Q. Have you any children?
No answer.
Q. How long have you been married?
A. When I went to China I marry.
Q. How many years have you been married?
A. One year.
Q. Then you went to China one year ago?
A. Don't know.
Q. Did you work in the U. S. before you went back to China?
A. Couldn't remember.
Q. You must know how old you were when you got married?
A. 22.
Q. Were you 22 years old when you got married?

A. Yes, sir.
Q. How long after you reached China did you get married?
A. Couldn't remember.
Q. What did you work at in the U. S. before you went to China?
A. I couldn't remember.
Q. Do you remember what city in the U. S. you worked in?
A. Couldn't remember.
Q. How do you expect to establish your right to be admitted and remain in the U. S.?
A. I have native-born papers.
Q. Where are they?
A. U. S.
Q. Where in the U. S. can the officers find them?
A. N. Y.
Q. What is the name of the person who has them, your native-born papers, now?
A. Couldn't remember.
Q. Who gave them to the party who has your native-born papers?
A. I don't remember.
Q. You must remember who has your paper, if you were 22 years old when you left the U. S. to go to China?
A. When I went to China I was so young, I couldn't remember.
64 Q. Did I understand you to say you were 22 years old when you went back to China?
A. I did not say.
Q. Were you married when you were 22?
A. Yes, sir.
Q. How old were you when you went to China?
A. Don't remember.
Q. Do you remember your going?
A. Yes, sir.
Q. How old were you when you went to China?
A. Don't remember.
Q. Do you remember your going?
A. Don't remember.
Q. You must have been a small child?
A. Don't remember.
Q. Who went with you?
A. Don't remember.
Q. Did your mother go with you?
A. Don't remember.
Q. Is your mother living now?
A. Don't remember.
Q. Didn't you see your mother just before you left China?
A. Couldn't remember.
Q. Did you have a letter from this country before you left telling you to come?
A. Couldn't remember.
Q. Where did you get the money to pay your fare to come to the United States this time?
A. Couldn't remember.

Q. How much money did it cost you to come here?
A. I don't remember.
Q. You understand a little English?
A. Don't know.
Q. Can you give the names of any Chinese persons or others living in the U. S. who knows you were born in the U. S., and when you went back to China?
A. Couldn't remember.
Q. You must have some friends in N. Y. City?
A. Couldn't remember.
Q. Did you ever have a letter from any of your friends in the U. S., while you were in China?
A. Couldn't remember.
65 Q. Did you ever see any uncles or cousins or brothers back in China since you have been there?
A. Couldn't remember.
Q. If there were any of your uncles or cousins over there during the last 15 years would you be apt to remember it?
A. Couldn't remember.
Q. Do you remember ever seeing any blood relations who went from the U. S. to China?
A. Couldn't remember.
Q. Have you any brothers in this building?
A. Couldn't remember.
Q. Do you know whether you have any brother upstairs or not?
A. No.
Q. Have you any brothers up there?
A. No.
Q. If you had a brother up there you would be apt to know it?
A. Don't know.
Q. How many brothers did you have living with you in China?
A. I am alone.
Q. Did you live all alone in your house in China?
A. Yes, sir.
Q. Then, as far as you know, you haven't any brothers?
A. No, sir.
Q. Nor any sisters?
A. No.
Q. Is your mother living?
A. Don't know.
Q. Do you know whether your father is living or not?
A. Couldn't remember.
Q. If your father is living now, how many years is it since you saw him?
A. Couldn't remember.
Q. Have you seen him since you have been home in China?
A. Shakes his head "No."
Q. Is there any statement you wish to make relative to your being admitted to the U. S.?
A. No.
Q. Do you think you have said everything that is of interest to the officers in determining your right to be in the U. S.?

A. Born in the U. S. I don't know nothing else.
Q. Who told you you were born in the U. S.?
A. I know, because I was born in the U. S.
66 Q. If you know you were born in the U. S., you must know how old you were when you went back to China?
A. Couldn't remember.
Q. How can you remember you were born in the U. S.?
A. Couldn't remember.
Q. Have you had a letter from your father in this country telling you to come?
A. Couldn't remember.
Q. Do you expect to write any letters to your friends in N. Y. while you are here?
A. No, sir.
Q. Do you expect to receive any?
A. Don't know.
Q. As far as you know, have you any blood relations, uncles or cousins, living in the U. S.?
A. My father is in the U. S.
Q. What city in the U. S.?
A. Couldn't remember.
Q. Do you think he is in New York?
A. Don't know.
Q. Have you had a letter from him since you have been in China?
A. No.
Q. Do you remember seeing your father since you have been back to China?
A. Couldn't remember.
Q. How old are you?
A. 23.
Q. You have lived in China for 15 or 16 years?
A. Couldn't remember.
Q. You went back to China when you were a small boy?
A. Yes, sir.
Q. What is your number?
A. 260.

Witness signed his name in Chinese characters to stenographer's minutes.

THOMAS D'ARCY,
Immigrant Inspector.
QUAN FOY,
Chinese Interpreter.

67 SEPT. 25, 1903.

JANE LOP, recalled and examined by Inspector D'Arcy:

Q. Are you the same Chinaman that was examined in this office by me a couple of days ago?
A. Yes, sir.
Q. I show you a photograph and ask you whose picture it is?
A. It is mine.

(Photograph introduced in evidence and marked "Exhibit No. 1 of the testimony of Jane Lop)."

I hereby certify that the above is a correct copy of the original statement of the above applicant.

(Signed) THOMAS D'ARCY,
Chinese Inspector in Charge.

(Endorsed:) Return of Thomas D'Arcy. Filed Nov. 10, 1903. W. S. Doolittle, clerk.

68 MALONE DETENTION HOUSE, *Sept. 24, 1903.*

Mon (Gee) Che. Inspector, Thomas D'Arcy.
No. 263. Interpreter, Quan Foy.
Class Native. Steno., H. N. Sterling.
Ex. S. S. "Empress of India." Sept. 23, 1903.

Q. What is your name?
A. Mon Gee.
Q. How old are you?
A. No answer (appears about 21).
Q. Do you seek admission to the U. S.?
A. Yes, sir.
Q. You now have a right to make a voluntary statement relative to your being admitted to the U. S., and if you can give the names of two persons who know you have the right to be admitted to the U. S., their testimony will be taken and your application will receive prompt attention.
No answer.
Q. Do you wish to give the names of any persons who know you have the right to be in the U. S.?
No answer.
Q. What city do you expect to go to when you leave here?
No answer.
Q. Boston, New York, Philadelphia, Washington, Baltimore?
No answer.
Q. Where do you expect to go?
A. U. S.
Q. Do you know any person that is living in the U. S.?
No answer.
Q. Did you ever go to school in China?
No answer.
Q. How old are you?
No answer.
Q. Who told you not to answer the questions?
No answer.
Q. Are you married?
No answer.
Q. Have you any brothers or uncles of blood relations living in the U. S.?
No answer.
Q. Can you name any country except China that you ever lived in?
No answer.

Q. Can you read and write the Chinese language?
No answer.
Q. What is your number in this detention house?
A. Shows ticket No. 263.
69 Q. Is that all you want to say relative to your application?
No answer.
A. Do you know any reason why you should not be returned to China?
No answer.
Q. Will you sign this statement?
Refuses to sign.

THOMAS D'ARCY,
Immigrant Inspector.
QUAN FOY,
Chinese Interpreter.

SEPT. 26, 1903.

MON GEE, recalled and examined by Inspector D'Arcy:

Q. Are you the same Chinaman that was examined by me in this office a couple of days ago?
A. Yes, sir.
Q. I show you a photograph and ask you whose picture it is?
A. It is mine.
(Photograph introduced in evidence and marked "Exhibit No. 1 of the testimony of Mon Gee.")

I hereby certify that the above is a correct copy of the original statement of the above applicant.

THOMAS D'ARCY,
Chinese Inspector in Charge.

(Endorsed:) Return of Thomas D'Arcy. Filed Nov. 10, 1903. W. S. Doolittle, clerk.

70 MALONE DETENTION HOUSE, *Sept. 24, 1903.*

Fong Ying. Inspector, Thomas D'Arcy.
No. 272. Interpreter, Quan Foy.
Class, Native. Steno., H. N. Sterling.
Ex S. S. "Empress of India," Sept. 23, 1903.

Q. What is your name?
A. Fong Ying.
Q. How old are you?
No answer. (Appears to be about 32.)
Q. Do you seek admission to the U. S.?
A. Yes, sir.
Q. Upon what ground do you base your right to be admitted?
No answer.
Q. You now have the right to make a voluntary statement relative to your right to be admitted to the U. S., and if you can give the names of two persons who know you have such a right, their testimony will be taken, and your application will receive prompt attention.
No answer.

Q. In what district did you live in China?
No answer.
Q. Where do you expect to go when you leave here?
No answer.
Q. Have you any blood relations in this detention house?
No answer.
Q. Have you any brothers or uncles or cousins living in the U. S.?
No answer.
Q. What is the name of the steamer you came over from China on?
No answer.
Q. Did you ever go to school?
No answer.
Q. Can you read and write the Chinese language?
No answer.
Q. What is your father's name?
No answer.
Q. What is your mother's name?
No answer.
Q. Do you wish to make any statement relative to your being admitted to the U. S.?
No answer.
Q. Have you got an attorney to represent you in this matter?
No answer.
Q. Do you wish to give the name of any attorney who you want to represent you and we will notify him?
No answer.
71 Q. What is your number in this detention house?
A. Shows ticket No. 272.
Q. Will you sign this statement?
A. Refuse to sign.

THOAMS D'ARCY,
Immigrant Inspector.
QUAN FOY,
Chinese Interpreter.

SEPT. 26, 1903.

FONG YING, recalled and examined by Inspector D'Arcy:

Q. Are you the same Chinaman that was examined by me in this office a couple of days ago?
A. Yes, sir.
Q. I show you a photograph and ask you whose picture it is?
A. It is mine.
(Photograph introduced in evidence and marked "Exhibit No. 1 of the testimony of Fong Ying.")
I hereby certify that the above is a correct copy of the original statement of the above applicant.

THOMAS D'ARCY,
Chinese Inspector in Charge.

(Endorsed:) Return of Thomas D'Arcy. Filed Nov. 10, 1903. W. S. Doolittle, clerk.

72 MALONE DETENTION HOUSE, *Sept. 24, 1903.*

Sing Hoy. Inspector, Thomas D'Arcy.
Class, Native. Interpreter, Quan Foy.
No. 279. Steno., H. N. Sterling.
Ex S. S. "Empress of India," Sept. 23, 1903.

Q. What is your name?
A. Sing Hoy.
Q. How old are you?
No answer. (Appears about 23.)
Q. By what right do you seek admission to the U. S.?
A. Born in the United States.
Q. How old are you?
No answer.
Q. Have you any brothers in the detention house?
No answer.
Q. What city in the U. S. were you born in?
A. U. S.
Q. Do you know the name of the State you were born in?
No answer.
Q. Can you give the names of any persons besides yourself who knows you were born in the U. S.?
No answer.
Q. Have you any uncles or blood relations living in the U. S.?
No answer.
Q. You now have the right to make a voluntary statement, and if you can give the names of two persons who knows you have the right to be admitted and remain in the U. S., their testimony will be taken and your case will receive the prompt attention of the officers.
No answer.
Q. Are you married?
No answer.
Q. Have you any brothers living in this detention house?
No answer.
Q. Did you attend school in China?
No answer.
Q. Can you read and write the Chinese language?
No answer.
Q. Have you received any letters in China from any of your friends in this country, telling you to come?
No answer.

73 Q. What is your number in this detention house?
A. Shows ticket No. 279.

Refuses to sign statement.

THOMAS D'ARCY, *Immigrant Inspector.*
QUAN FOY, *Chinese Interpreter.*

SEPT. 26, 1903.

SING HOY recalled and examined by Inspector D'Arcy:

Q. Are you the same Chinaman that was examined by me in this office a couple of days ago?

A. Yes, sir.

Q. I show you a photograph, and ask you whose picture it is?

A. It is mine.

(Photograph introduced in evidence and marked "Exhibit No. 1 of the testimony of Sing Hoy.")

I hereby certify that the above is a correct copy of the original statement of the above applicant.

(Signed) THOMAS D'ARCY,
Chinese Inspector in Charge.

(Endorsed:) Return of Thomas D'Arcy. Filed Nov. 10, 1903. W. S. Doolittle, clerk.

74 MALONE DETENTION HOUSE, *Sept. 24, 1903.*

Lum Quong, Inspector, Thomas D'Arcy.
No. 281. Interpreter, Quan Foy.
Class, Native. Steno., H. N. Sterling.

Ex S. S. "Empress of India," Sept. 23, 1903.

Q. What is your name?

A. Lum Quong.

Q. How old are you, Lum?

No answer. (Appears about 17.)

Q. Where did you come from, China?

No answer.

Q. Where are you going to?

A. U. S.

Q. Who told you you were going to the U. S.?

No answer.

Q. What are you going to the United States for?

No answer.

Q. Do you want to be admitted to the U. S.?

No answer.

Q. What reason can you give why you should be admitted to the U. S.?

No answer.

Q. Have you any friends in the U. S.?

No answer.

Q. Have you any Chinese that you want to testify in your favor showing your right to be admitted to the U. S.?

No answer.

Q. Have you any relatives in this detention?

No answer.

Q. Where is your father living?

No answer.

Q. Have you any brothers?

No answer.

Q. Where did you live in China?

No answer.

Q. On what vessel did you come over?

No answer.

Q. If you have any friends or witnesses that you want to testify in your favor, showing you have the right to be admitted to the U. S., we will see them any time you may bring them.

No answer.

Q. You have a right to make a statement and tell your reasons why you are entitled to enter the U. S., if you care to do so.

No answer.

75 Q. What is the number of your ticket?

A. Shows ticket No. 281.

Q. Can you write your name?

No answer.

THOMAS D'ARCY, *Immigrant Inspector.*
QUAN FOY, *Chinese Inspector.*

SEPTEMBER 26, 1903.

LUM QUONG, recalled and examined by Inspector D'Arcy:

Q. Are you the same Chinaman that was examined by me in this office a couple of days ago?

A. Yes, sir.

Q. I show you a photograph and ask you whose picture it is?

A. It is mine.

(Photograph introduced in evidence and marked "Exhibit No. 1 of the testimony of Lum Quong.")

I hereby certify that the above is a correct copy of the original statement of the above applicant.

(Signed) THOMAS D'ARCY,
Chinese Inspector in Charge.

(Endorsed:) Return of Thomas D'Arcy. Filed Nov. 10, 1903. W. S. Doolittle, clerk.

76 MALONE DETENTION HOUSE, *Sept. 24, 1903.*

Lin Mow, Inspector, Thomas D'Arcy.
No. 282, Interpreter, Quan Foy.
Class, Native. Steno., H. N. Sterling.
Ex S. S. "Empress of India," Sept. 23, 1903.

Q. What is your name?

A. Lin Mow.

Q. Whose son are you?

No answer.

Q. Where did you come from?

No answer.

Q. Do you come from China?

No answer.

Q. What boat did you come over on?

No answer.

Q. Do you understand what we are saying to you?

No answer.
Q. How old are you?
No answer. (Appears about 22.)
Q. Where are you going?
A. U. S.
Q. Why are you going there?
No answer.
Q. Have you got a brother living there?
No answer.
Q. Where does your father live?
No answer.
Q. Can you give us any reason why you should not be admitted to the U. S.?
No answer.
Q. Have you any friends that you want to testify in your favor of your right to be admitted to the U. S.?
No answer.
Q. Have you any friends in the U. S.?
No answer.
Q. Do you know anybody living in the U. S.?
No answer.
Q. How much did it cost you to come here from China?
No answer.
Q. Who told you not to say anything when you were brought before the officers?
No answer.
Q. Did somebody on the vessel that brought you over tell you not to talk?
No answer.
Q. Do you want to make any statement as to why you should be admitted to the U. S.?
No answer.
Q. If you have any witnesses to testify in your favor, or any other testimony, the officers will see them at any time.
A. No answer.
Q. What is the number of your ticket in this detention house?
A. Shows ticket 282.
77 Q. Can you read Chinese?
No answer.
Q. You just read the correct number on your ticket in Chinese?
No answer.
Q. You can read and write Chinese, can't you?
No answer.
Q. Will you sign this statement?
No answer.

THOMAS D'ARCY,
Immigrant Inspector.
QUAN FOY,
Chinese Interpreter.

SEPT. 26, 1903.

LIN MOW, recalled and examined by Inspector D'Arcy:

Q. Are you the same Chinaman that was examined by me in this office a couple of days ago?

A. Yes, sir.

Q. I show you a photograph and ask you whose picture that is?

A. It is mine.

(Photograph introduced in evidence and marked "Exhibit No. 1 of the testimony of Lin Mow.")

I hereby certify that the above is a correct copy of the original statement of the above applicant.

(Signed) THOMAS D'ARCY,
Chinese Inspector in Charge.

(Endorsed:) Return of Thomas D'Arcy. Filed Nov. 10, 1903. W. S. Doolittle, clerk.

78 MALONE DETENTION HOUSE, *Sept. 24, 1903.*

Bow Lung, Inspector, Thomas D'Arcy.
No. 283, Interpreter, Quan Foy.
Class, native. Steno., H. N. Sterling.
Ex S. S. "Empress of India," Sept. 23, 1903.

Q. What is your name?
A. Bow Lung.
Q. Have you just come from China?
No Answer.
Q. Have you any brothers with you in the detention house?
No answer.
Q. Where are you going?
No answer.
Q. Where does your father live?
No answer.
Q. In what village in China does he live?
No answer.
Q. How old are you?
No answer. (Appears about 22.)
Q. Can you read and write the Chinese language?
No answer.
Q. Does you' eyes hurt you?
No answer.
Q. Where do you want to go?
No answer.
Q. Where would you go if we let you out of the building?
No answer.
Q. Would you go back to China?
No answer.
Q. Do you want to go to Cuba?
No answer.
Q. For what purpose did you come here?
No answer.
Q. Where was your grandfather born?
No answer.

Q. Where was your great-grandfather born?
No answer.
Q. Where was your son born?
No answer.
Q. You want to go to the United States, don't you?
No answer.
Q. Do you understand what we are saying to you?
No answer.
Q. What is the number of your ticket?
A. 283.
Q. Do you want to go to supper?
No answer.
Q. Do you know any Chinese persons living in the U. S.?
No answer.
Q. Won't you tell us where you want to go?
No answer.
79 Q. Have you got a railroad ticket?
No answer.
Q. If you don't tell us where you want to go we won't know where to send you?
No answer.
Q. Do you want to go back to China?
No answer.
Q. Do you want to go to the U. S.?
No answer.

THOMAS D'ARCY,
Immigrant Inspector.
QUAN FOY,
Chinese Interpreter.

SEPT. 26, 1903.

BOW LUNG, recalled and examined by Inspector D'Arcy:

Q. Are you the same Chinaman that was examined by me in this office a couple of days ago?
A. Yes.
Q. I show you a photograph and ask you whose it is?
A. It is mine.
(Photographs introduced in evidence and marked "Exhibit No. 1 of the testimony of Bow Lung.")
I hereby certify that the above is a correct copy of the original statement of the above applicant.

(Signed) THOMAS D'ARCY,
Chinese Inspector in Charge.

(Endorsed:) Return of Thomas D'Arcy. Filed Nov. 10, 1903. W. S. Doolittle, clerk.

80 MALONE DETENTION HOUSE, *Sept. 24, 1903.*

Gong Sing. Inspector, Thomas D'Arcy.
No. 284. Interpreter, Quan Foy.
Class, Native. Steno., H. N. Sterling.
Ex S. S. "Empress of India," Sept. 23, 1903.

Q. What is your name?
A. Gong Sin.
Q. Where did you come from?
A. U. S.
Q. I mean, where did you come from when you came here?
No answer.
Q. Did you come from China here?
No answer.
Q. Did you come here with the rest of the Chinese two days ago from Montreal?
No answer.
Q. Where is your father living?
No answer.
Q. Is your father living?
No answer.
Q. Have you any brothers?
No answer.
Q. Have you any brothers in the detention house here with you?
No answer.
Q. For what purpose did you come here?
A. Born in the U. S.
Q. For what purpose did you come here?
A. Born in the U. S., now I come back.
Q. When did you leave the U. S.?
No answer.
Q. Have you got any papers?
No answer.
Q. You now want to be admitted, do you?
No answer.
Q. What reason can you give why you should be admitted?
No answer.
Q. Did you understand what we are saying to you?
No answer.
Q. Who told you not to talk?
No answer.
Q. When did you leave China last?
No answer.
Q. You came from China on the "Empress of India," didn't you?
No answer.
Q. Where did you sail from; Hong Kong?
No answer.
Q. Do you know anybody living in the United States?
No answer.
Q. When did your father leave the U. S.?
No answer.

81 Q. Where does your mother live now?
No answer.
Q. Does your mother live in the United States?
No answer.
Q. What do you intend to do if you are admitted?
No answer.
Q. What is your number?
A. 284.
Q. Will you sign this statement?
A. Refuses to sign.

THOMAS D'ARCY,
Immigrant Inspector.
QUAN FOY,
Chinese Interpreter.

SEPT. 25, 1903.

GONG SIN recalled and examined by Inspector D'Arcy:

Q. Are you the same Chinaman that was examined by me in this office a couple of days ago?
A. Yes, sir.
Q. I show you a photograph, and ask whose picture it is?
A. It is mine.
(Photograph introduced in evidence and marked "Exhibit #1 of the testimony of Gong Sin.")

I hereby certify that the above is a correct copy of the original statement of the above applicant.
(Signed) THOMAS D'ARCY,
Chinese Inspector in Charge.

(Endorsed:) Return of Thomas D'Arcy. Filed Nov. 10, 1903. W. S. Doolittle, clerk.

82 MALONE DETENTION HOUSE, *Sept. 24, 1903.*

Ark Len Wing, Inspector Thomas D'Arcy.
No. 285. Interpreter, Quan Foy.
Class, native. Steno., H. N. Sterling.
Ex S. S. "Empress of India," Sep. 23, 1903.

Q. What is your name?
A. Ark Wing.
Q. Where did you come from?
No answer.
Q. Is your home in China?
No answer.
Q. Where is your mother?
No answer.
Q. Where is your home if it is not in China?
No answer.
Q. Where do you live when you are at home?
No answer.
Q. How old are you?

No answer. (Appears about 40.)
Q. Did you come from China here?
No answer.
Q. What vessel did you come from China on?
No answer.
Q. Where are you going?
No answer.
Q. Where do you want to go?
No answer.
Q. Did you come here for the purpose of entering the U. S.?
A. Yes; United States.
Q. What reason can you give for permitting you to enter the U. S.?
No answer.
Q. Do you know any Chinese living in the United States?
No answer.
Q. Have you any brothers with you in the detention house?
No answer.
Q. Is your father living?
No answer.
Q. Where does he live, if living?
No answer.
Q. Have you any friends or witnesses that you wish to testify in your behalf showing your right to enter the U. S.?
No answer.
Q. If you have any such witnesses we ask you to bring them here in order that they may testify in your behalf.
No answer.
Q. Until you give some reason why you should be admitted to the U. S. the officers are not permitted to admit you.
No answer.
83 Q. Do you care to say anything as to whether the officers should admit you?
No answer.
Q. Do you understand what we are saying to you?
No answer.
Q. What is the number of your ticket?
A. Shows ticket No. 285.

THOMAS D'ARCY,
Immigrant Inspector.
QUAN FOY,
Chinese Interpreter.

SEPT. 26, 1903.

ARK WING, recalled and examined by Inspector D'Arcy:

Q. Are you the same Chinaman that was examined by me in this office a couple of days ago?
A. Yes, sir.
Q. I show you a photograph and ask whose picture it is?
A. It is mine.

(Photograph introduced in evidence and marked "Exhibit No. 1 of the testimony of Ark Wing.")

I hereby certify that the above is a correct copy of the original statement of the above applicant.

(Signed) THOMAS D'ARCY,
Chinese Inspector in Charge.

(Endorsed:) Return of Thomas D'Arcy. Filed Nov. 10, 1903. W. S. Doolittle, clerk.

84 *Motion to dismiss writ of habeas corpus.*

United States circuit court, northern district of New York.

In the matter of the application of Sing Tuck or King Do et al. for a writ of habeas corpus.

I, George B. Curtiss, United States district attorney for the northern district of New York, appearing for the United States, intervening herein, and for Thomas D'Arcy, Chinese inspector herein on behalf of the United States and said Thomas D'Arcy upon the petition and return herein, move that the writs of habeas corpus herein be dismissed on the following grounds:

First. This court has no jurisdiction to review the determination of the immigration officers of the United States in denying to the petitioners herein the right to enter the United States.

Second. That the determination of the immigration officers on the question of the right of the petitioners to enter the United States is final and conclusive, no appeal having been taken therefrom to the Secretary of Commerce and Labor.

Third. That it is not established by the petition and return that the petitioners or any of them have lawful right to enter the United States.

85 Fourth. That the facts set forth in the petition and return show that the petitioners have no legal right to enter the United States.

Fifth. That the petitioners are not unlawfully detained or deprived of their liberty.

Dated Nov. 10, 1903.

GEO. B. CURTISS,
U. S. Dist. Atty., N. D. N. Y.

(Endorsed:) Motion to dismiss writ of habeas corpus. Filed Nov. 10, 1903. W. S. Doolittle, clerk.

Stipulation.

United States circuit court, northern district of New York.

In the matter of the application of Sing Tuck or King Do et al. for a writ of habeas corpus.

It is hereby stipulated and conceded by R. M. Moore, attorney for the petitioners, that immediately upon the decision of the Chinese inspectors and immigration officers of the United States of America, denying to

the several petitioners herein the right to enter the United States, that each of the several petitioners named herein were, by such officers,
86 informed of such decision, and also duly informed of their right to take an appeal from such decision to the Secretary of Commerce and Labor of the United States of America.

It is also agreed that this stipulation may be attached to the returns herein and be deemed to apply to each of the returns to the petition herein.

Made and entered into in open court at a term of the United States circuit court held at Utica, November 10, 1903, upon the returns being made to the writ herein.

GEO. B. CURTIS,
U. S. District Attorney for the Northern District of New York, representing the United States, and Thomas D'Arcy, to whom said writ was directed.

R. M. MOORE,
Attorney for the petitioners herein.

(Endorsed:) Stipulation. Filed Nov. 10, 1903. Geo. W. Ray, U. S. judge. Filed Dec. 5, 1903. W. S. Doolittle, clerk.

87 *Opinion.*

United States circuit court, northern district of New York.

In the matter of Sing Tuck or King Do and thirty-one others.
R. M. Moore for petitioners.
George B. Curtiss, U. S. attorney, opposed.
Ray, district judge:

The petitioners, Chinese persons, thirty-two in number, apply for discharge from custody in the detention house at Malone, N. Y., on habeas corpus, alleging that they are citizens of the United States, illegally restrained of their liberty and illegally detained by Thomas D'Arcy, Chinese inspector of the United States of America, at Malone, N. Y., in what is known as "The detention house." The petition for the writ is made by the attorney for the petitioners on information and belief.

It is admitted that the petitioners are Chinese persons; that they came from China and applied for admission into the United States at the port of Malone, N. Y., and were denied admission by the executive officers of the Government of the United States duly authorized to act and acting under and by virtue of the Chinese exclusion laws, on the ground that they are citizens of China and not of the United States, and not shown to be within the classes entitled to admission. The peti-
88 tioners were duly notified of their right to appeal from the decision refusing them admission to the Secretary of Commerce and Labor of the United States. The petitioners have taken no appeal, but swear out a writ of habeas corpus in this court, alleging that they were born in the United States under circumstances making them citizens of the United States, and that as such they have the right to have that fact tried and determined in the courts of the United States and by the judicial department of the Government, and that this question of citizenship can not be determined by the executive officers of the Government, at least, so

as to bind them and deprive them of their right to appeal to the courts for a due trial and determination of that question of fact; that "due process of law" guarantees them this right.

When they applied for admission twenty-six of the petitioners stated that they were Chinese persons and made application for entry, but refused to answer any other questions touching their right to enter. The other petitioners, six in number, stated that they were Chinese persons, applied for entry into the United States, and also stated that they were born within the United States, and refused to answer any further questions. No one of the petitioners offered to show citizenship, or to comply with the law relating to the entrance of Chinese persons into the United States.

The return to the writ shows the above facts, but denies that the petitioners are citizens of the United States or were born therein, and alleges in effect that the determination of the immigration officers and Chinese inspectors, not appealed from, is final and conclusive on the question of citizenship, as well as all others involved, and that that question was necessarily involved and adjudicated in the determination made.

On the return of the proceedings under the writ, the United States district attorney for the northern district of New York, intervening in
89 behalf of the United States, and appearing in behalf of said Chinese inspector, to whom the writ was directed, moved that the writ be dismissed and the petitioners remanded on the following grounds:

"First. This court has no jurisdiction to review the determination of the immigration officers of the United States in denying to the petitioners herein the right to enter the United States."

"Second. That the determination of the immigration officers on the question of the right of the petitioners to enter the United States is final and conclusive, no appeal having been taken therefrom to the Secretary of Commerce and Labor."

"Third. That it is not established by the petition and return that the petitioners or any of them have a lawful right to enter the United States."

"Fourth. That the facts set forth in the petition and return show that the petitioners have no legal right to enter the United State."

"Fifth. That the petitioners are not unlawfully detained or deprived of their liberty."

This court will take testimony and determine the question of citizenship unless the decision of the inspector acting under the Commissioner-General of Immigration and the Secretary of Commerce and Labor, not appealed from, is final and conclusive, res adjudicata on the question of the citizenship of the petitioners, provided that question has been properly raised and presented by the record.

The one question is, has Congress the constitutional power to
90 confer upon the executive department, the executive officers of the Government, jurisdiction to try and finally determine adversely the question whether a person seeking to enter the United States is a citizen thereof and as such entitled to enter? Is this a political question? The other question is, have the petitioners, or either of them, placed themselves in a position to raise this question of citizenship in this court?

That Congress has full authority to confer upon the executive officers of the Government plenary power to exclude and deport aliens of any nationality is settled.

Fong Yue Ting v. United States, 149 U. S., 698.
Wong Wing v. United States, 163 U. S., 228.
Chae Chan Ping v. United States, 130 U. S., 581.
Nishimura Ekiu v. United States, 142 U. S., 651–659.
Japanese Immigrant case, 189 U. S., 86.
Lem Moon Sing v. United States, 158 U. S., 538.

It is claimed that the power to exclude and deport aliens necessarily includes the power to try and determine the question whether the person excluded or proceeded against is an alien. While Congress has the power to provide for the exclusion and deportation of aliens, and may fix the terms and conditions on which aliens may enter the United States or remain, being here, and also has the power to confer the authority to determine whether those terms and conditions have been complied with on executive officers of the Government, it does not necessarily follow that, for purposes of exclusion or deportation, the power to determine who are aliens and who are citizens may be conferred by Congress on the executive officers or executive department of the Government.

91 The one question is, whether persons conceded to be aliens shall be admitted at all or on or under certain conditions, the existence of which conditions is matter of proof, or deported if certain conditions have not been complied with, &c., and in no sense determines or adjudges the question of citizenship, which is not an issue, while the other question is one that involves the status, liberty, and property rights of the person or persons refused admission or proceeded against. A citizen has the right to live in the country of which he is a citizen; to go and come as he pleases, even to go to and return from a foreign country, if he conforms to the quarantine and other laws on the subject, and to own property and exercise many rights not belonging to an alien, unless banished as a punishment for crime. The right to refuse all aliens admission into the United States is conceded.

A citizen of the United States can not constitutionally be refused admission. Aliens found in the United States may be deported simply because they are aliens.

A citizen of the United States can not in any event lawfully be deported, unless as a punishment for crime, of which he has been duly convicted after a fair trial by the judicial department of the Government. Nor can he be excluded from the country. As an attribute of sovereignty, a sovereign nation, as a means of self-preservation, both in times of war and times of peace, must have, and has, the right to determine who shall be citizens thereof, and what persons, not being citizens, shall be permitted to enter or reside within its territorial limits, and also fix the terms and conditions on which such persons may remain, and also change them at will. But once admitted to citizenship in the United States, the person so admitted becomes a party to the Constitution, entitled to the benefits of its guarantees of protection according to and under the laws adopted in conformity thereto. At first blush, it

92 would seem clear that a person claiming to be a citizen of the United States has the right to have that alleged fact, if disputed under circumstances involving his liberty and property rights, determined in the courts and according to the established rules and forms of legal procedure. If not so, then any citizen may be deported, in effect

banished from the United States, if it is charged that he is an alien, and laws excluding and deporting all aliens are enacted, on the judgment of any executive officer on whom Congress may see fit to devolve the determination of the question of expulsion, &c., and consequently that of citizenship. If no appeal is provided, such judgment would be final and conclusive, and the form or mode of trial (in the absence of legislative enactment) might depend on the mere whim or caprice of the executive officer clothed with power in the premises. Has any decision of the Supreme Court of the United States gone to the extent of holding any such doctrine?

It may be well to cite some of the cases and quote the language of the court:

In the Nishimura case, 142 U. S., 651, the court said:

"It is not within the province of the judiciary to order that foreigners who have never been naturalized, nor acquired any domicil or residence within the United States, nor even been admitted into the country pursuant to law, shall be permitted to enter, in opposition to the constitutional and lawful measures of the legislative and executive branches of the National Government. As to such persons, the decisions of executive or administrative officers, acting within the powers expressly conferred by Congress, are due process of law."

In Lem Moon Sing v. United States, 158 U. S., 538, the court said:

"The power of Congress to exclude aliens altogether from the
93 United States, or to prescribe the terms and conditions upon which they may come to this country, and to have its declared policy in that regard enforced exclusively through executive officers, without judicial intervention, is settled by our previous adjudications."

In Fok Yung Yo v. United States, 185 U. S., 296–305, the court said:

"Congressional action has placed the final determination of the right of admission in executive officers, without judicial intervention, and this has been for many years the recognized and declared policy of the country."

In that case it was admitted that the petitioner was a subject of the Empire of China. On his arrival at the port of San Francisco he stated that he intended to pursue his journey to San Jose de Guatemala. The collector refused to permit him to proceed further. Habeas corpus proceedings were then instituted. No question of citizenship was involved in that case, and it is clear under the decisions that the action of the executive officers was final and conclusive.

In the Japanese Immigrant case, 189 U. S., 86, the court held:

"2. It has been firmly established by numerous decisions of this court that it is within the constitutional power of Congress to exclude aliens of a particular race from the United States; prescribe the terms and conditions upon which certain classes may come to this country; establish regulations for sending out of the country such aliens as come here in violation of law, and commit the enforcement of such provisions, conditions, and regulations to executive officers, without judicial intervention."

94 "3. An administrative officer, when executing the provisions of a statute involving the liberty of persons, may not disregard the fundamental principles of due process of law as understood at the

time of the adoption of the Constitution. Nor is it competent for any executive officer, at any time within the year limited by the statute, to to arbitrarily cause an alien who has entered the country, and has become subject in all respects to its jurisdiction, and a part of its population, although illegally here, to be arrested and departed without giving such alien an opportunity, appropriate to the case, to be heard upon the questions involving his right to be and remain in the United States.

Where, however, the alien had notice, although not a formal one, the courts cannot interfere with the executive officers conducting it. The objections of the alien to the form of the investigation could have been presented to the officer having primary control of the case, or by an appeal to the Secretary of the Treasury, and the action of the executive officers is not subject to judicial review."

But here no question of citizenship was involved.

In Wong Wing v. United States, 163 U. S., 228, it was decided:

"Detention or temporary confinement, as part of the means necessary to give effect to the exclusion or expulsion of Chinese aliens is valid.

"The United States can forbid aliens from coming within their borders, and expel them from their territory, and can devolve the power and duty of identifying and arresting such persons upon executive or subordinate officials, but when Congress sees fit to further promote such a policy by subjecting the persons of such aliens to infamous pun-
95 ishment at hard labor, or by confiscating their property, such legislation to be valid, must provide for a judicial trial to establish the guilt of the accused."

The court in its opinion said:

"We regard it as settled by our previous decisions that the United States can, as a matter of public policy, by Congressional enactment, forbid aliens or classes of aliens from coming within their borders, and expel aliens or classes of aliens from their territory, and can, in order to make effectual such decree of exclusion or expulsion, devolve the power and duty of identifying and arresting the persons included in such degree, and causing their deportation, upon executive or subordinate officials."

In using the word "identifying" did the court mean to understand as holding that it is competent for Congress to devolve upon executive officials the power to ascertain and determine who are and who are not aliens?

In Nishimura Ekiu v. The United States, 142 U. S., 651, it was decided:

"The act of March 3, 1891, c. 551, forbidding certain classes of alien immigrants to land in the United States, is constitutional and valid.

"Upon a writ of habeas corpus, if sufficient ground for the prisoner's detention by the Government is shown, he is not to be discharged for defects in the original arrest or commitment.

"Inspectors of immigration under the act of March 3, 1891, c. 551, are to be appointed by the Secretary of the Treasury.

"The decision of an inspector of immigration, within the
96 authority conferred upon him by the act of March 3, 1891, c. 551, that an *an* alien immigrant shall not be permitted to land because within one of the classes specified in that act, is final and conclusive against his right to land, except upon appeal to the Commissioner of

Immigration and the Secretary of the Treasury, and can not be reviewed on habeas corpus even if it is not shown that the inspector took or recorded any evidence on the question."

In this case there was no pretense that the petitioner was a citizen of the United States.

In United States v. Jung Ah Lung, 124 U. S., 621 the head notes are as follows:

"A Chinese laborer, who resided in the United States on November 17, 1880, continued to reside there till October 24, 1883, when he left San Francisco for China, taking with him a certificate of identification issued to him by the collector of that port, in the form required by the 4th section of the act of May 6, 1882, c. 126, 22 Stat., 58, which was stolen from him in China, and remained outstanding and uncanceled. Returning from China to San Francisco by a vessel, he was not allowed by the collector to land, for want of the certificate, and was detained in custody in the port, by the master of the vessel, by direction of the customs authorities. On a writ of habeas corpus, issued by the district court of the United States, it appeared that he corresponded, in all respects, with the description contained in the registration books of the custom-house of the person to whom the certificate was issued. He was discharged from custody, and the order of discharge was affirmed by the circuit court."

97 On appeal to this court, by the United States, held:

"(1) He was in custody under or by color of the authority of the United States, and the district court had jurisdiction to issue the writ;"

"(4) The jurisdiction of the court was not affected by the fact that the collector had passed on the question of allowing the person to land, or by the fact that the treaty provides for diplomatic action in a case of hardship."

"(3) The case of the petitioner was not to be adjudicated under the provisions of the act of July 5, 1884, c. 220, 23 Stat., 115, where they differed from those of the act of 1882."

"(4) In view of the provisions of § 4 of the act of 1882, in regard to a Chinese laborer arriving by sea, as distinguished from those of § 12 of the same act in regard to one arriving by land, the district court was authorized to receive the evidence it did in regard to the identity of the petitioner, and, on the facts it found, to discharge him from custody."

In Lem Moon Sing v. United States, 158 U. S., 546, 547, 548, the court said:

"The contention is that while, generally speaking, immigration officers have jurisdiction under the statute to exclude an alien who is not entitled under some statute or treaty to come into the United States; yet, if the alien is entitled, of right, by some law or treaty, to enter this country, but is nevertheless excluded by such officers, the latter exceed their jurisdiction; and their illegal action, if it results in restrain-

98 ing the alien of his liberty, presents a judicial question for the decision of which the courts may intervene upon a writ of habeas corpus.

"That view, if sustained, would bring into the courts every case of an alien who claimed the right to come into the United States under some law or treaty, but was prevented from doing so by the executive branch

of the Government. This would defeat the manifest purpose of Congress in committing to subordinate immigration officers and to the Secretary of the Treasury exclusive authority to determine whether a particular alien seeking admission into this country belongs to the class entitled by some law or treaty to come into the country, or to a class forbidden to enter the United States. Under that interpretation of the act of 1894 the provision that the decision of the appropriate immigration or customs officers should be final, unless reversed on appeal to the Secretary of the Treasury, would be of no practical value.

"The power of Congress to exclude aliens altogether from the United States, or to prescribe the terms and conditions upon which they may come to this country, and to have its declared policy in that regard enforced exclusively through executive officers, without judicial intervention, is settled by our previous adjudications. Is a statute passed in execution of that power any less applicable to an alien, who has acquired a commercial domicil, within the United States, but who, having voluntarily left the country, although for a temporary purpose, claims the right under some law or treaty to reenter it? We think not. The words of the statute are broad and include 'every case' of an alien, at least every Chinese alien, who, at the time of its passage, is out
99 of this country, no matter for what reason, and seeks to come back. He is none the less an alien because of his having a commercial domicil' in this country. While he lawfully remains here he is entitled to the benefit of the guaranties of life, liberty, and property secured by the Constitution to all persons, of whatever race, within the jurisdiction of the United States. His personal rights when he is in this country and such of his property as is here during his absence are as fully protected by the supreme law of the land as if he were a native or naturalized citizen of the United States. But when he has voluntarily gone from the country, and beyond its jurisdiction, being an alien, he can not reenter the United States in violation of the will of the Government as expressed in enactments of the lawmaking power. He can not, by reason merely of his domicil' in the United States for purposes of business, demand that his claim to reenter this country by virtue of some statute or treaty, shall be determined ultimately, if not in the first instance, by the courts of the United States, rather than exclusively and finally, in every instance, by executive officers charged by an act of Congress with the duty of executing the will of the political department of the Government in respect of a matter wholly political in its character. He left the country subject to the exercise by Congress of every power it possessed under the Constitution."

In Fong Yue Ting v. United States, 149 U. S., at page 713, the court said:

"The power to exclude or expel aliens, being a power affecting international relations, is vested in the political departments of the Government, and is to be regulated by treaty or by act of Congress, and
100 to be executed by the executive authority according to the regulations so established, except so far as the judicial department has been authorized by treaty or by statute, or is required by the paramount law of the Constitution, to intervene."

In substance this is the effect of all the decisions bearing on the subject.

This court finds no case decided by the Supreme Court of the United States holding that Congress may commit to the executive department under the interstate-commerce clause of the Constitution the right to determine finally the question of the citizenship of a person applying for admission into the United States.

In United States v. Wong Kim Ark, 169 U. S., 649, the petitioner applied to the collector of customs at San Francisco for permission to land and enter the United States. He was refused admission and restrained of his liberty by the collector, who decided he was not entitled to enter. The petitioner claimed citizenship, and this was the question before the courts. It was decided that he was a citizen and discharged on that ground. His citizenship was denied and directly in question. It does not appear that the right of the courts to intervene was challenged, or that it was claimed that the decision of the collector was final or conclusive.

In Chin Bak Kan v. United States, 186 U. S., 193, it was charged that the petitioner, a Chinese person, knowingly and unlawfully came into the United States and was not entitled to remain. He was informed of the charge against him and advised that he would be permitted to make a statement without or with oath, or refuse to make any statement or to answer any question put to him, and was entitled to reasonable time to send for counsel and to procure the attendance of witnesses. He denied the charges made, but admitted that he had just come into the
101 United States. The hearing and trial was had before a United States commissioner, who decided that the petitioner was a Chinese person and a laborer, and that he unlawfully entered the United States as charged in the complaint and was not entitled to remain therein. It was accordingly adjudged that he be removed from the United States to the Empire of China. The petitioner gave no proof that he was a citizen of the United States or of any country other than China. From the judgment of deportation an appeal was taken to the district court of the United States, where the judgment of deportation was affirmed. On appeal to the Supreme Court of the United States it was held that it was competent for Congress to empower a United States commissioner to determine the various facts on which the citizenship of a Chinese person depends. The court held that:

"A United States commissioner is a quasi judicial officer, and in these hearings he acts judicially. Moreover, this case was taken by appeal from the commissioner to the judge of the district court, and his decision was affirmed, so that there was an adjudication by a United States judge in the constitutional sense as well as by the commissioner acting as a judge in the sense of the statute."

The court further said in the opinion:

"By the law the Chinese person must be adjudged unlawfully within the United States unless he 'shall establish by affirmative proof, to the satisfaction of such justice, judge, or commissioner, his lawful right to remain in the United States.' As applied to aliens there is no question of the validity of that provision, and the treaty, the legislation, and the circumstances considered, compliance with its requirements can not be avoided by the mere assertion of citizenship. The facts on
102 which such a claim is rested must be made to appear. And the inestimable heritage of citizenship is not to be conceded to those

who seek to avail themselves of it under pressure of a particular exigency, without being able to show that it was ever possessed.

"Section thirteen of the act of September 13, 1888, provides that any Chinese person, or person of Chinese descent, found unlawfully in the United States, may be arrested on a warrant issued upon a complaint under oath, 'by any justice, judge, or commissioner of any United States court,' and when convicted, on a hearing, and found and adjudged to be one not lawfully entitled to be or remain in the United States, shall be removed to the country whence he came. 'But any such Chinese person convicted before a commissioner of the United States court may, within ten days from such conviction, appeal to the judge of the district court for the district.'

"It seems to have been assumed, during the years following the date of the act, and is conceded by the United States, that although most of its provisions were dependent upon the ratification of the treaty of March 12, 1888, and failed with the failure of ratification, that this section is in and of itself independent legislation and in force as such. Accordingly in this case an appeal was taken from the judgment of deportation rendered by the commissioner to the judge of the district court of the United States for the northern district of New York, and, upon hearing, the district court affirmed that judgment. From the judgment of the district court this appeal was taken under section five of the act of March 3, 1891, on the ground that the construction of the treaty of 1894 was drawn in question. Except in cases under that section where the question of jurisdiction alone is certified, we have power to dispose of the
103 entire case, but as the jurisdiction of the commissioner is sustained, we are of opinion that we can not properly reexamine the facts already determined by two judgments below. That is the general rule, and there is nothing to take this case out of its operation, and, on the contrary, the conclusion is, a fortiori, justified. The same reasoning in respect to the authority to exclude applies to the authority to expel, and the policy of the legislation in respect to exclusion and expulsion is opposed to numerous appeals. And we are not disposed to hold that where a Chinese laborer has evaded the executive jurisdiction at the frontier and got into the country, he is therefore entitled to demand repeated rehearings on the facts."

Article 5, amendments to the Constitution of the United States, provides, "No person shall be * * * deprived of life, liberty, or property, without due process of law. * * *"

We are thus brought to face with the proposition whether or not "due process of law" in determining the question of citizenship, when raised in proceedings to exclude or deport aliens, requires a trial and determination of the question in the courts of the United States by the judicial department of the Government? That to exclude from entry into the United States, or to deport therefrom, a citizen of the United States deprives him of liberty and property in the constitutional sense can not be successfully denied. Liberty includes not only the right to be out of prison, free to come and go, if the law is not violated in so doing, but to engage in all lawful pursuits, earn a livelihood, and own and enjoy property.

The powers of jurisdiction of the judicial department is thus defined by the Constitution, art 3, sec. 1:

"The judicial power of the United States shall be vested in
104 one supreme court, and in such inferior courts as the Congress may from time to time ordain and establish." * * *

Sec. 2. "The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States and treaties made, or which shall be made under their authority * * * to controversies to which the United States shall be a party. * * *"

The fourteenth amendment to the Constitution declares who are citizens and, as we have seen, no person is to be deprived of life, liberty, or property without due process of law. When a citizen of the United States seeks to enter the country and is denied the right to enter and refused entrance by the executive officers acting under a law of Congress authorizing them to exclude and refuse admission to alien Chinese, or Chinese persons, and such refusal of admission is sought to be justified on the ground that the party seeking entrance is an alien and not a citizen, and such person is then held in custody to be returned to China and he appeals to the courts alleging that he is illegally restrained of his liberty and that he is a citizen of the United States, and is held under the determination of a tribunal having no jurisdiction to pronounce it, do we not have "a case" arising under the Constitution, or a controversy to which the United States is a party? Does not the judicial power extend to this class of cases and these controversies? And, if so, may Congress devolve the determination of the questions involved on the application for admission on the executive officers of the Government and make their decision final? But when we consider that we have a Government divided into departments, legislative, executive, and judicial, the making, the execution, and the interpretation of laws being committed to each respectively, it is not strange that there is found occasionally an
105 apparent conflict of authority. The determination of all questions of fact relating to controversies between the United States and citizens thereof does not necessarily devolve upon or belong to the judicial, department of the Government. There are many cases where the other departments are the sole and final arbiters in such controversies.

See Johnson v. Towsley, 13 Wall., 72–83; French v. Fyan, 93 U. S., 169–172; Quinby v. Conlan, 104 U. S., 420–426; Steel v. Smelting Co., 106 U. S., 450–453.

The Supreme Court has decided what facts must exist to constitute a person born in the United States of alien parents a citizen thereof. This is a determination by the judicial department of what the law is and as to what facts must exist to create that status. When a person comes to our shores seeking admission as a citizen, must the existence or nonexistence of the facts alleged by him be determined by the judicial department, or may that department which has authority over the coming of persons into the United States determine whether or not such facts exist? May not it ascertain and determine who are and who are not aliens? Would the law be operative and effective if the power does not exist? If such department may do this then the question here is, did the executive officers named have jurisdiction to ascertain the facts on which the citizenship of the petitioners depend? And of this there can be no serious question.

It is conceded that the petitioners are Chinese persons. They came from the Empire of China, and if born within the United States must have departed therefrom. They sought to return to and enter the United States, and having returned to our borders they applied for admission into the United States. They presented no proof of citizenship and made no pretense of compliance with the laws relating to and regulating
106 the return to the United States of Chinese persons. It must be competent for Congress to enact laws regulating the departure from and return to the United States of its own citizens. By the Constitution Congress has power to regulate interstate commerce, and this includes the coming of persons, any person, into the United States.

Congress in the exercise of this power has seen fit to enact:

"SEC. 4. That the master of any vessel arriving in the United States from any foreign port or place with any Chinese passengers on board shall, when he delivers his manifest of cargo, and if there be no cargo, when he makes legal entry of his vessel, and before landing or permitting to land any Chinese person (unless a diplomatic or consular officer, or attendant of such officer) deliver to the collector of customs of the district in which the vessel shall have arrived, the sealed certificate and letters as aforesaid, and a separate list of all Chinese persons taken on board of this vessel at any foreign port or place, and of all such persons on board at the time of arrival as aforesaid. Such list shall show the names of such persons and other particulars as shown by their open certificates, or other evidences required by this act, and such list shall be sworn to by the master in the manner required by law in relation to the manifest of the cargo." (See sec. 4, act of Sept. 13, 1888.)

"SEC. 12. That no Chinese person shall be permitted to enter the United States by land without producing to the proper officer of customs the certificate in this act required of Chinese persons seeking to land from a vessel." (See sec. 12, act of July 5, 1884.)

107 "SEC. 12. That before any Chinese passengers are landed from any such vessel the collector, or his deputy, shall proceed to examine such passengers, comparing the certificates with the list and with the passengers; and no passenger shall be allowed to land in the United States from such vessel in violation of law; and the collector shall in person decide all questions in dispute with regard to the right of any Chinese passenger to enter the United States, and his decision shall be subject to review by the Secretary of the Treasury and not otherwise." (See sec. 12, act of Sept. 13, 1888.)

Was it not competent for Congress to make this law and make it applicable to all Chinese persons, whether citizens or aliens?

If so, then these petitioners were bound to show compliance with the law, and not having done so, were properly denied admission.

Applying for admission, twenty-six of them made no claim of citizenship; the other six merely stated they were born in the United States, but made no statement and offered no evidence showing they were born in the United States under circumstances and conditions making them citizens. We have, then, a case of Chinese persons applying for admission into the United States and making application to those officers authorized by law to identify Chinese aliens and refuse them admission. They made no claim and offered no proof of citizenship. Judgment

having gone against them, as to their right to enter and necessarily as to their citizenship, they apply by counsel, who states on information and belief that they are citizens, for a writ of habeas corpus, seeking to try the question of their right to enter in the courts on a new plea or
108 allegation of fact not before asserted by them. If this can be done every Chinese person applying for admission and refused can, by alleging citizenship, bring the matter into court and have this question determined by the judicial department of the Government and in the courts. It will be said there is no force in this proposition provided the petitioners have the constitutional right to appeal to the courts for a trial of this question of fact.

In Chin Bak Kan v. United States, 186 U. S., 193, it was held that a United States commissioner is a quasi-judicial officer and that in the hearings under the Chinese exclusion laws he acts judicially. The court says: "But it is argued that the commissioner had no jurisdiction to act because the claim of citizenship was made." The court then states the facts necessary to make a Chinese person born in the United States a citizen of the United States, as held in United States v. Wong Kim Ark, 169 U. S., 649, and then says: "It is impossible for us to hold that it is not competent for Congress to empower a United States commissioner to determine the various facts on which citizenship depends under that decision."

A United States commissioner is neither a court nor the judge of any court, nor is he vested by law with any part of the judicial power of the United States, for the judicial power is vested in the Supreme Court and "such inferior courts as the Congress may from time to time ordain and establish," and can not be vested in a commissioner, who is neither made a court nor empowered to hold a court in the constitutional sense. True, he is an inferior officer of the court, appointed by it by authority of Congress with defined and circumscribed powers, but no part of the judicial power of the United States is vested in him, nor can it be.

United States v. Case, 8 Blatch. (U. S.), 250.

United States v. Schuman, 2 Abb. (U. S.), 523.

In re Kaine, 14 How. (U. S.), 103.

United States v. Clark, 1 Gall. (U. S.), 497.

109 In United States v. Case, supra, Woodruff, J., said "the commissioner holds no court; he acts simply as an arresting, examining, and committing magistrate."

In U. S. v. Schuman, supra, Field, J., said:

"The powers conferred are judicial in their nature, for judgment and discretion must be exercised, but they are not judicial in the sense in which judicial power is granted by the Constitution to the courts of the United States."

In U. S. v. Clark, supra, held that a judge of the United States court sitting as an examining magistrate is not a court.

If, then, it is competent for the Congress to commit to United States commissioners the determination of the various facts on which the citizenship of a Chinese person depends, why is it not competent for Congress to commit to executive officers appointed by the heads of departments having jurisdiction of immigration and interstate commerce the determination of the facts on which the citizenship of Chinese

persons applying for admission into the United States depends? All are inferior officers of the Government and possess those powers and those only which Congress confers. If in determining such a question a United States commissioner acts judicially and is a quasi-judicial officer (because of his powers and duties, not because Congress devolved his appointment on the courts), why are not the executive officers duly empowered by Congress to hear and decide and pronounce judgment in these cases fully as much quasi-judicial officers, and why do not they too act judicially in hearing and deciding these cases?

Neither the commissioner nor the inspector, &c., is exercising the judicial power of the Government, for it is not vested in either
110 of them and, as said, can not be. The Constitution, as we have seen, vests this power in the courts alone. It follows that a United States commissioner in determining the various facts on which the citizenship of a Chinese person depends, while acting judicially, is neither possessed of nor exercising any part of the judicial power of the United States, and that under the holding in Chin Bak Kan v. United States, it is competent for Congress to confer upon any inferior officer of the Government, especially those appointed by the Department of Commerce and Labor, which has power to regulate the coming of all persons into the United States, plenary power to determine the various facts on which citizenship depends (so far as they relate to persons applying for admission into the United States), and that an appeal may be taken to the Secretary of Commerce and Labor, whose decision shall be final. If no appeal is taken, then the determination of the inferior officer is of course final, res adjudicata of those facts.

Chin Bak Kan v. United States, 186 U. S., 193.

Judgment has been passed by those officers competent and duly authorized and having jurisdiction to pronounce it, and this court is without power in this proceeding to annul or reverse it. The petitioners are not deprived of their liberty without due process of law, for they have had a competent tribunal in which to be heard, a hearing with opportunity to present their evidence, a judgment or determination, and the right of appeal, all according to the law of the land. This is due process of law.

In the Japanese immigrant case, 189 U. S., 86, at page 100, Mr. Justice Harlan said (speaking of due process of law):

"No person shall be deprived of his liberty without opportunity at some time to be heard before such officers (those clothed with
111 authority in the premises), in respect to the matters upon which that liberty depends, not necessarily an opportunity upon a regular set occasion and according to the forms of judicial procedure, but one that will secure the prompt, vigorous action contemplated by Congress, and at the same time be appropriate to the nature of the case upon which such officers are required to act."

Here was such an occasion and such a hearing. The petitioners can not complain, for when called upon to speak, and when it was their duty to speak, they remained mute, refusing to present the facts calling for a favorable decision, if such facts existed. The proceeding was not a criminal action in fact or in its nature. The petitioners applied for admission into the United States, and were bound to come prepared to show their

right to enter, that right being denied. There is no pretense they were denied a hearing or an opportunity to present evidence. The officers duly authorized to act, and acting according to law, heard and considered all the evidence offered or presented, and then gave judgment.

It may be remarked that the constitutional power of the Department of Commerce and Labor under the interstate and foreign commerce clause of the Constitution seems to be broad enough to give Congress power to confer jurisdiction on its officers to determine all questions of the right of persons to enter the United States, including the facts on which depends that of citizenship.

It is not intended to hold, and this court is not to be understood as holding, that cases may not arise (extraordinary in their nature and facts) where an appeal to the courts in appropriate proceedings may not be had, but under the facts of this case, as presented to the court and as presented to the executive officers, noncompliance with the law on the part of these petitioners "can not be avoided by the mere assertion of citizenship" made at this time and in this manner.

Chin Bak Kan v. United States, 186 U. S., 193.

112 The petitioners assert that there is a decided distinction between the laws committing the decision of these questions to United States commissioners and those devolving the power on inspectors of immigration. It is pointed out that in the case of commissioners an appeal to and review by a judge of the district court, and then by the higher courts, is provided for or permitted, and, hence, that there may be a hearing in the courts of the United States, which constitutes due process of law, while no appeal to a judge or the courts from the decision of the inspector is permitted, only on appeal to the Secretary of Commerce and Labor. The trial and determination of the questions involved are committed to United States commissioners, and their decisions are final if not appealed from. If this provision is invalid (does not accord due process of law), it is difficult to see how the hearing before an officer having no jurisdiction is validated by giving the right of appeal from his decision to the courts having jurisdiction in such cases. The record upon which the courts pass when the case comes up on appeal is made by the commissioner, and it is the correctness of his conclusions on the law and facts that is reviewed on appeal. The case is not tried and determined de novo. If the commissioner has no jurisdiction, then the Chinese person proceeded against has had no constitutional trial or hearing, and the illegal and unauthorized proceeding can not be validated by the action of any appellate tribunal, its power being confined to a review of the proceedings had before the commissioner.

It follows from these considerations that the petitioners are not illegally held or detained. The writ must be dismissed and the persons remanded. So ordered.

(Endorsed:) Opinion. George W. Ray, judge. Filed Nov. 30, 1903. W. S. Doolittle, clerk.

113 *Order dismissing writ of habeas corpus.*

United States circuit court, northern district of New York.

In the matter of the application of Sing Tuck or King Do, Boke Kay, Mon Chock, One Mon, King Dock, Gee Kee, Bok Wah, Quen Jong, Quong Sang, Wing Foo, Chong Yuet, Hong (Quai) Yong, Sing Kee, Due Ark, Hong Tai, Lum Chong, Sang Chong, Ming Chuey, Ham Sang, That (Shet) Shong, Do Lin, Jane (Lop) Lys, Mon (Gee) Che, Fong Ying, Ark On, Sing Hoy, Quin Lung, Lum Quong, Lum Mow, Bow Lung, Gong Sin, and Ark Len Wing for a writ of habeas corpus.

A petition having been duly presented, dated October 16th, 1903, made by R. M. Moore, esq., on behalf of the above-named Sing Tuck et al., alleging, among other things, that the said Sing Tuck or King Do, Boke Kay, Mon Chock, One Mon, King Dock, Gee Kee, Bok Wah, Quen Jong, Quong Sang, Wing Foo, Chong Yuet, Hong (Quai) Yong,
114 Sing Kee, Due Ark, Hong Tai, Lum Chong, Sang Chong, Ming Chuey, Ham Sang, That (Shet) Shong, Do Lin, Jane (Lop) Lys, Mon (Gee) Che, Fong Ying, Ark On, Sing Hoy, Quin Lung, Lum Quong, Lum Mow, Bow Lung, Gong Sin, and Ark Len Wing are Chinese persons born in the United States, and are citizens thereof, and that they are restrained of their liberty and detained by Thomas D'Acry, Chinese inspector of the United States, at Malone, N. Y., and praying that a writ of habeas corpus be issued out of said court, directed to the said Thomas D'Arcy, Chinese inspector of the United States, to inquire into the cause of such detention, and on the 23d day of October, 1903, a writ of habeas corpus having been duly issued in the name of the President of the United States of America to Thomas D'Arcy, Chinese inspector, commanding him to have the bodies of the said Sing Tuck and the said above-named other Chinese persons before the undersigned, George W. Ray, judge of the United States district court for the northern district of New York, at his chambers in the United States courthouse in the city of Utica, N. Y., on the 10th day of November, 1903, to do and receive what shall then and there be commanded of him, and on the said 10th day of November, 1903, the said Thomas D'Arcy having made return to such writ of habeas corpus, and showing, among other things, that the said above-named Sing Tuck and each and of the other said Chinese persons on the 13th day of October, 1903, applied to the Chinese inspectors of the United States at the port of Malone, within the northern district of New York, for entry into the United States, and that they, the said Sing Tuck and each of the other above-named Chinese persons were aliens, having immediately arrived from the Empire of China, and were seeking to enter the United States, and that the question of their right to enter the United States and the question of the place of their birth was duly tried, considered, and determined by the Chinese inspectors of the United
115 States, and officers duly authorized by the Congress of the United States to inquire into and determine the right of Chinese persons to enter the United States, and that it was duly decided and determined that the said Sing Tuck and each of the other said Chinese persons were Chinese persons and not born within the United States, and not entitled to enter the United States, and that they, the said Sing Tuck and each of the other Chinese persons named in said writ, were being held by

him, the said Thomas D'Arcy, as Chinese inspector of the United States, in the detention house provided by the Secretary of Commerce and Labor of the United States for the detention of Chinese persons and immigrants pending an investigation of their right to be admitted to the United States, and for their return to the Empire of China, from whence they came, according to law; and it appeared further from said return that the said Sing Tuck and the other named Chinese persons had not taken an appeal from the decision of the said Chinese inspectors, refusing them admission into the United States, to the Secretary of Commerce and Labor, as provided by law; that on the return day of said writ, to wit, the 10th day of November, 1903, the said R. M. Moore, esq., appeared as the attorney for Sing Tuck and each of said above-named Chinese persons, and that George B. Curtiss, United States district attorney for the northern district of New York, appeared as the attorney for the said Chinese inspector, Thomas D'Arcy, and also intervened in behalf of the United States of America and moved that the writ of habeas corpus herein be dismissed upon the following grounds:

First. This court has no jurisdiction to review the determination of the immigration officers of the United States in denying to the petitioners herein the right to enter the United States.

116 Second. That the determination of the immigration officers on the question of the right of the petitioners to enter the United States is final and conclusive, no appeal having been taken therefrom to the Secretary of Commerce and Labor.

Third. That it is not established by the petition and return that the petitioners, or any of them, have a lawful right to enter the United States.

Fourth. That the facts set forth in the petition and return show that the petitioners have no legal right to enter the United States.

Fifth. That the petitioners are not unlawfully detained or deprived of their liberty.

And, after hearing R. M. Moore, esq., on behalf of the said Sing Tuck and each of the other said Chinese persons, and after hearing George B. Curtiss, United States district attorney, on behalf of the said Thomas D'Arcy and the United States of America, and after having duly considered the matters involved, it is hereby

Adjudged that the detention of the said Sing Tuck or King Do, Boke Kay, Mon Chock, One Mon, King Dock, Gee Kee, Bok Wah, Quen Jong, Quong Sang, Wing Foo, Chong Yuet, Hong (Quai) Yong, Sing Kee, Due Ark, Hong Tai, Lum Chong, Sang Chong, Ming Chuey, Ham Sang, That (Shet) Shong, Do Lin, Jane (Lop) Lys, Mon (Gee) Che, Fong Ying, Ark On, Sing Hoy, Quin Lung, Lum Quong, Lum Mow, Bow Lung, Gong Sin, and Ark Len Wing, by the said Thomas D'Arcy is lawful, and it is therefore hereby

Ordered, that the said petition by denied; that the writ of habeas corpus herein be dismissed, and that the said Sing Tuck and each of the other above-named Chinese persons be remanded to the custody

117 of Thomas D'Arcy, Chinese inspector of the United States, to be dealt with according to law.

GEO. W. RAY, *U. S. Judge.*

(Endorsed:) Or. dismissing writ of habeas corpus. Filed Dec. 3, 1903. W. S. Doolittle, clerk.

Appeal.

United States circuit court of appeals, second circuit.

In the matter of the application of Sing Tuck or King Do, Boke Kay, Mon Chock, One Mon, King Dock, Gee Kee, Bok Wah, Quen Jong, Quong Aang, Ying Foo, Chong Yuet, Hong (Quai) Yong, Sing Kee, Due Ark, Hong Tai, Lum Chong, Sang Chong, Wing Chuey, Ham Sang, That (Shet) Shong, Do Lin, Jane (Lop) Lys, Mon (Gee) Che, Fong Ying, Ark On, Sing Hoy, Quin Lung, Lum Quong, Lum Mow, Bow Lung, Gong Sin, and Ark Len Wing for a writ of habeas corpus.

The above-named defendants, through their attorneys, Cantwell
118 & Moore, feeling themselves aggrieved by the judgment and order dismissing the petitioner's application for a writ of habeas corpus herein made and entered on the 1st day of December, 1903, by the Hon. George W. Ray, judge of the United States district court, the said judgment and order dismissing the petitioner's application for a writ of habeas corpus herein, which writ was theretofore allowed by the said judge, do hereby appeal from said judgment, order, and decision to the circuit court of appeals for the second circuit, and pray that their appeal may be allowed, and that a copy of the record of proceedings and papers upon which said judgment, decision, and order was made, duly authenticated, may be sent to the circuit court of appeals of the second judicial circuit of the United States.

CANTWELL & MOORE,
Attorneys for Petitioners, 11 William Street,
Borough of Manhattan, New York City.

119 *Order allowing appeal and staying proceedings.*

United States circuit court of appeals, second circuit.

In the matter of the application of Sing Tuck or King Do, Boke Kay, Mon Chock, One Mon, King Dock, Gee Kee, Bok Wah, Quen Jong, Quong Aang, Ying Foo, Chong Yuet, Hong (Quai) Yong, Sing Kee, Due Ark, Hong Tai, Lum Chong, Sang Chong, Wing Chuey, Ham Sang, That (Shet) Shong, Do Lin, Jane (Lop) Lys, Mon (Gee) Che, Fong Ying, Ark On, Sing Hoy, Quin Lung, Lum Quong, Lum Mow, Bow Lung, Gong Sin, and Ark Len Wing for a writ of habeas corpus.

And now, to wit, on the 7th day of December, 1903, it is ordered that the appeal be allowed as prayed for; and

It is further ordered, that the proceedings herein be stayed until the hearing and determination of said appeal.

ALFRED C. COXE, *U. S. J.*

120 *Assignment of errors.*

United States circuit court of appeals, second circuit.

In the matter of the application of Sing Tuck or King Do, Boke Kay, Mon Chock, One Mon, King Dock, Gee Kee, Bok Wah, Quen Jong, Quong Aang, Ying Foo, Chong Yuet, Hong (Quai) Yong, Sing Kee, Due Ark, Hong Tai, Lum Chong, Sang Chong, Wing Chuey, Ham Sang, That (Shet) Shong, Do Lin, Jane (Lop) Lys, Mon (Gee) Che, Fong Ying, Ark On, Sing Hoy, Quin Lung, Lum Quong, Lum Mow, Bow Lung, Gong Sin, and Ark Len Wing for a writ of habeas corpus.

Afterwards, to wit, on the 7th day of December, 1903, before the honorable judge of the circuit court of appeals for the second circuit, in the State of New York, comes the defendants above named by their attorneys, Cantwell & Moore, and says in the record of proceedings aforesaid,
121 there is a manifest error, and that the judgment, order, and decision appealed from above is erroneous, as follows:

That the said judgment, order, and decision dismissing the petitioner's application for a writ of habeas corpus, made on the 1st day of December, 1903, in the above-entitled proceedings by the United States district judge, Hon. George W. Ray, is erroneous, as contrary to law, and that the said judgment, order, and decision so entered is erroneous, as contrary to law, and that the said judgment, order, and decision should have allowed to the petitioners the issuing of the writ of habeas corpus to determine the issues raised by *by* the petition and answer, to wit, were and are the petitioners citizens of the United States, which issue is a question of fact and could only be determined by taking evidence upon the issues raised by the petition and answer, and that the said decision, judgment, and order was further erroneous in that it held the alleged decision of the immigrant officer to be final and res adjudicata. Then, as a matter of fact, no competent or legal decision was ever rendered by the said inspector, and even if such decision had been legally rendered by the proper immigrant officer, it would not be final and res adjudicata as to the question of citizenship, as the inspector's authority is limited as to the rights of aliens to enter into the United States.

Wherefore, by the law of the land the writ should have been allowed and evidence offered to determine the issues raised by the petition and answer, and if the contention of the petitioner is true, then the writ should have been sustained and the defendant's discharged, and the defendants now pray that the said judgment and order made and entered by the Hon. George W. Ray, judge of the district court, in the office of the clerk of the United States district court for the northern district
122 of New York, on the 1st day of December, 1903, be reversed and for such other and further relief as may be proper in the premises.

CANTWELL & MOORE,
Attorneys for Defendants, 11 William Street,
Borough of Manhattan, N. Y. City.

Presented Dec. 9, 1903.

A. C. C.

(Endorsed:) Appeal, order allowing appeal and staying proceedings and assignment of errors. Filed Dec. 12, 1903. W. S. Doolittle, clerk.

United States circuit court of appeals for the second circuit.

In the matter of the application of Sing Tuck or King Do and others for a writ of habeas corpus.

STATE OF NEW YORK,
County of New York, ss:

R. M. Moore, being duly sworn, says: That he is a member of the law firm of Cantwell & Moore, having an office and place of business at No. 11 William street, borough of Manhattan, New York City, and

that on the 11th day of December, 1903, he served the annexed citation on George B. Curtis, United States district attorney for the north-
123 ern district of New York, by depositing a copy thereof properly enclosed in a postpaid wrapper in the post-office of said New York City, directed by the said George B. Curtis at Binghamton, New York, the place where the said George B. Curtis resides and has his office.

ROBERT M. MOORE.

Subscribed and sworn to before me this 15th day of December, 1903.

E. A. DAKIN,
Notary Public, Richmond County.

Certificate filed in New York County.

124 United States circuit court of appeals for the second circuit.

In the matter of the application of Sing Tuck or King Do, Boke Kay, Mon Chock, One Mon, King Dock, Gee Kee, Bok Wah, Quen Jong, Quong Aang, Ying Foo, Chong Yuet, Hong (Quai) Yong, Sing Kee, Due Ark, Hong Tai, Lum Chong, Sang Chong, Wing Chuey, Ham Sang, That (Shet) Shong, Do Lin, Jane (Lop) Lys, Mon (Gee) Che, Fong Ying, Ark On, Sing Hoy, Quin Lung, Lum Quong, Lum Mow, Bow Lung, Gong Sing, and Ark Len Wing for a writ of habeas corpus.

UNITED STATES OF AMERICA,
Second Judicial Circuit, ss:

You are hereby cited and admonished to be and appear at a session of the United States circuit court of appeals for the second circuit, to be held at the city of New York, in said circuit, on the 6th day of January, 1904, pursuant to an appeal filed in the clerk's office of the district court of the United States for the northern district of New York, and to show cause, if any there be, why the judgment and order rendered
125 against the above-named petitioners should not be corrected, and why speedy justice should not be done in that behalf.

Given under my hand at the city of New York, State of New York, in the circuit above named, this 9th day of December, 1903, and of the Independence of these United States the one hundred and twenty-seventh.

ALFRED C. COXE, *U. S. J.*

(Endorsed:) United States circuit court of appeals for the second circuit. In the matter of the application of Sing Tuck or King Do and others for a writ of habeas corpus. Citation. Cantwell & Moore, attorneys for defendants, 11 William street, borough of Manhattan, New York. U. S. circuit court, N. D. of N. Y. Filed Dec. 16, 1903. W. S. Doolittle, clerk.

UNITED STATES OF AMERICA,
Northern District of New York, ss:

I, William S. Doolittle, clerk of the circuit court of the United States of America for the northern district of New York, in the second circuit, do hereby certify that the foregoing pages numbered from 1 to 421, inclusive, contain a true and complete transcript of the record and pro-

ceedings had in said court, in the matter of the application of Sing Tuck or King Do and thirty-one others, for a writ of habeas corpus, as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of Utica, in the northern district of New York, in the second circuit, this ninth day of January, in the year of our Lord one thousand nine hundred and four, and of the Independence of the United States the one hundred and twenty-eighth.

[SEAL.] W. S. DOOLITTLE, *Clerk.*

126 United States circuit court of appeals for the second circuit.

In the matters of the application of Sing Tuck or King Doe and 31 others for a writ of habeas corpus.

It is hereby stipulated that the following amendments and alterations be made in the return filed herein:

1. Strike out pages 4 to 19, inclusive.
2. On page 20, insert after "right," the words interlined in pencil, to wit: "And as the burden of proof is upon him to establish his right to enter the United States and having failed to do so."
3. After page 20, insert "an order identical with the foregoing except in name was made in the case of each of the petitioners."
4. Strike out pages 21 to 35, inclusive.
5. Strike out page 45, and insert in place thereof, "Attached to the foregoing is an order identical with that in the case of Sang Chong except as to name."
6. Strike out pages 49 to 56, inclusive, and insert in place thereof, "a return similar to the foregoing was made by Inspector Darcy in the case of each petitioner."
7. Strike out pages 58 to 65, inclusive.
8. Strike out pages 68 to 75, inclusive.
9. Strike out pages 78 to 85, inclusive.
10. Strike out pages 88 to 95, inclusive.
11. Strike out from pages 98 to 105.
12. Strike out pages 108 to 115, inclusive.

127 13. Strike out pages 118 to 126, inclusive.

14. Strike out pages 129 to 135, inclusive.
15. Strike out pages 138 to 145, inclusive.
16. Strike out pages 148 to 155, inclusive.
17. Strike out pages 158 to 165, inclusive.
18. Strike out pages 168 to 175, inclusive.
19. Strike out pages 178 to 185, inclusive.
20. Strike out pages 188 to 196, inclusive.
21. Strike out pages 202 to 209, inclusive.
22. Strike out pages 212 to 219, inclusive.
23. Strike out pages 222 to 229, inclusive.
24. Strike out pages 232 to 239, inclusive.
25. Strike out pages 242 to 249, inclusive.
26. Strike out pages 252 to 259, inclusive.
27. Strike out pages 262 to 269, inclusive.
28. Strike out pages 272 to 279, inclusive.

29. Strike out pages 282 to 289, inclusive.
30. Strike out pages 296 to 303, inclusive.
31. Strike out pages 306 to 313, inclusive.
32. Strike out pages 316 to 323, inclusive.
33. Strike out pages 326 to 333, inclusive.
34. Strike out pages 336 to 343, inclusive.
35. Strike out pages 346 to 353, inclusive.
36. Strike out pages 356 to 363, inclusive.
37. Strike out pages 366 to 373, inclusive.

Jan. 19th, 1904.

GEO. B. CURTISS,
U. S. Attorney.
CANTWELL & MOORE,
Attys. for Petitioners.

Ordered accordingly.

E. HENRY LACOMBE.

(Endorsed:) U. S. circuit court of appeals. In the matter of the application of Sing Tuck or King Doe for a writ of habeas corpus. Stipulation. United States circuit court of appeals, second circuit. Filed Jan. 19, 1904. William Park, clerk in.

128 United States circuit court of appeals for the second circuit.

No. 177. October term, 1903.

Submitted January 28, 1904. Decided February 2, 1904.

SING TUCK OR KING DO, AND THIRTY-ONE OTHERS, appellants,
vs.
THE UNITED STATES, APPELLEE.

Appeal from the circuit court of the United States for the northern district of New York.

Before Judges Lacombe, Townsend, and Coxe.

This cause comes here upon appeal from a decision of the circuit court, northern district of New York, dismissing a writ of habeas corpus. The petitioners were Chinese persons seeking to enter the United States. They were stopped by the immigration officers, who upon examination and enquiry, decided that they were not entitled to enter, and held them for deportation when the writ of habeas corpus was issued. The petition for the writ avers that the petitioners, although Chinese persons, were born in the United States and are citizens thereof. The returns to the writ showed that such examination had been made and such decision (unreversed on appeal to the Secretary of Commerce) had been arrived at. The circuit court held that: "Judgment has been passed by those officers competent and duly authorized and having jurisdiction to pronounce it, and this court is without power in this proceeding to annul or reverse it," and dismissed the writs.

129 Lacombe, circuit judge. The statutes relating to Chinese immigration provide a method whereby all Chinese persons seeking to

enter the United States shall be examined by executive officers touching their right so to enter. It is also provided in the act of August 18, 1894, that "in every case where an alien is excluded from admission into the United States * * * the decision of the appropriate immigration or customs officers, if adverse to the admission of such alien, shall be final, unless reversed on appeal to the Secretary of the Treasury." It is settled by the decision in Wong Kim Ark v. The U. S. (169 U. S., 649) that a child born in the United States of parents of Chinese descent who at the time of his birth were subjects of the Emperor of China, but had a permanent domicil, and residence in the United States, and were not employed in any diplomatic or official capacity under the Emperor of China, becomes at the time of his birth a citizen of the United States.

In Gee Fook Sing v. U. S. (49 F. R., 146) the circuit court of appeals in the ninth circuit held that "the laws excluding immigrants who are Chinese laborers are inapplicable to a person born in this country * * *; that any person alleging himself to be a citizen of the United States, and desiring to return to his country from a foreign land, and that he is prevented from doing so without due process of law, and who on that ground applies to any United States court for a writ of habeas corpus, is entitled to have a hearing and a judicial determination of the facts so alleged; and that no act of Congress can be understood or construed as a bar to such hearing and judicial determination." In this opinion we fully concur. We need not enter into the discussion of any constitutional questions presented on the briefs (and which do not come before this court for review); we are satisfied that however broad the language of the exclusion acts may be, it was not within the intent of Congress to submit the right of a native-born citizen of the United States to return to the land of his birth, to the final determination of executive officers. When therefore a
130 Chinese citizen of the United States is deprived of his liberty by an executive officer who is about to deport him, we are of the opinion that he is entitled to apply to the Federal court for a habeas corpus to enquire into the cause of his detention. To entitle himself to such writ he must, of course, satisfy the court that he can at least make out a prima facie case in support of the proposition that he is a citizen. But, when he has done that and the writ has issued, he is not precluded from insisting upon a judicial investigation of the issue, on any theory that the decision of the immigration officers is final, or that he has failed to conform to some of the regulations required in the case of Chinese persons who are aliens.

The order of the circuit court is reversed and cause remanded for enquiry into the status of the individual relators. This disposition of the cause is not to be taken as an expression of opinion as to whether in any of the cases a prima facie case even was made out by petitioner.

It has been suggested that this decision will affect a large number of pending causes, and will seriously interfere with the execution of the Chinese exclusion laws in the district. If the district attorney wishes to apply to the Supreme Court for a certiorari, the mandate will be held until he shall have had a reasonable opportunity so to do.

R. M. Moore for the appellants.

George B. Curtiss for the appellee.

22799—04——6

131 At a stated term of the United States circuit court of appeals, in and for the second circuit, held at the court rooms in the post-office building in the city of New York, on the 11th day of February, one thousand nine hundred and four.

Present: Hon. E. Henry Lacombe, Hon. William K. Townsend, Hon. Alfred C. Coxe, circuit judges.

SING TUCK OR KING DO AND 31 others, appellants, *vs.* THE UNITED STATES, APPELLEE. } Appeal from the circuit court of the United States for the northern district of New York.

This cause came on to be heard on the transcript of record from the circuit court of the United States for the northern district of New York, and was argued by counsel.

On consideration whereof it is now hereby ordered, adjudged, and decreed that the order of said circuit court be, and it hereby is, reversed, and cause remanded with instructions to enquire into the status of the individual relators.

It is further ordered that a mandate issue to the said circuit court in accordance with this decree.

132 (Endorsed:) United States circuit court of appeals, second circuit. Sing Tuck *vs.* U. S. Order for mandate. United States circuit court of appeals, second circuit. Filed Feb. 13, 1904. William Parkin, clerk.

133 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, William Parkin, clerk of the United States circuit court of appeals for the second circuit, do hereby certify that the foregoing pages, numbered from 1 to 132, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the case of Sing Tuck or King Do, & 31 others, against United States, as the same remain of record and on file in my office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this 15th day of February, in the year of our Lord one thousand nine hundred and four, and of the Independence of the said United States the one hundred and twenty-eighth.

WM. PARKIN, *Clerk.*

134 UNITED STATES OF AMERICA, ss:

The President of the United States of America, to the honorable the judges of the United States circuit court of appeals for the second circuit, greeting:

Being informed that there is now pending before you a suit in which Sing Tuck or King Do and thirty-one others are appellants and the United States is appellee, which suit was removed into the said circuit court of appeals by virtue of an appeal from the circuit court of the United States for the northern district of New York, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said circuit court of appeals
135 and removed into the Supreme Court of the United States, do hereby command you that you send without delay to the said

Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the honorable Melville W. Fuller, Chief Justice of the United States, the second day of March, in the year of our Lord one thousand nine hundred and four.

JAMES H. MCKENNEY,
Clerk of the Supreme Court of the United States.

136 (Indorsed:) File No., 19242. Supreme Court of the United States. No. 591. October term, 1903. The United States vs. Sing Tuck or King Do & thirty-one others. Writ of certiorari. Filed Mar. 4, 1904. William Parkin, clerk. United States circuit court of of appeals, second circuit.

137 In the Supreme Court of the United States, October term, 1903.

THE UNITED STATES, PETITIONERS,
vs.
SING TUCK OR KING DO AND THIRTY-ONE OTHERS, respondents. } No. 591.

Stipulation as to return.

It is hereby stipulated by counsel for the parties to the above-entitled cause that the certified copy of the transcript of the record and proceedings in the circuit court of appeals for the second circuit, now on file in the Supreme Court of the United States, shall constitute the return of the clerk of the circuit court of appeals to the writ of certiorari issued herein.

H. M. HOYT,
Solicitor-General.
CANTWELL & MOORE,
Counsel for Respondents.

138 *To the Supreme Court of the United States, greeting:*

The record and all proceedings whereof mention is within made having been lately certified and filed in the office of the clerk of the honorable the Supreme Court of the United States, a copy of the stipulation of counsel is hereto annexed, and under direction of counsel for the petitioner, said stipulation is certified as a return to the writ of certiorari issued herein.

Dated, New York, March 4, 1904.

[SEAL.]

WM. PARKIN,
Clerk of the United States Circuit Court of Appeals for the Second Circuit.

139 (Indorsed:) United States circuit court of appeals, second circuit. Sing Tuck or King Do & 31 others v. U. S. Return to certiorari.

140 (Indorsed:) File No., 19242. Supreme Court U. S. October term, 1903. Term No., 591. The United States, petitioner, vs. Sing Tuck or King Do & thirty-one others. Writ of certiorari and return thereto. Filed March 5th, 1904.

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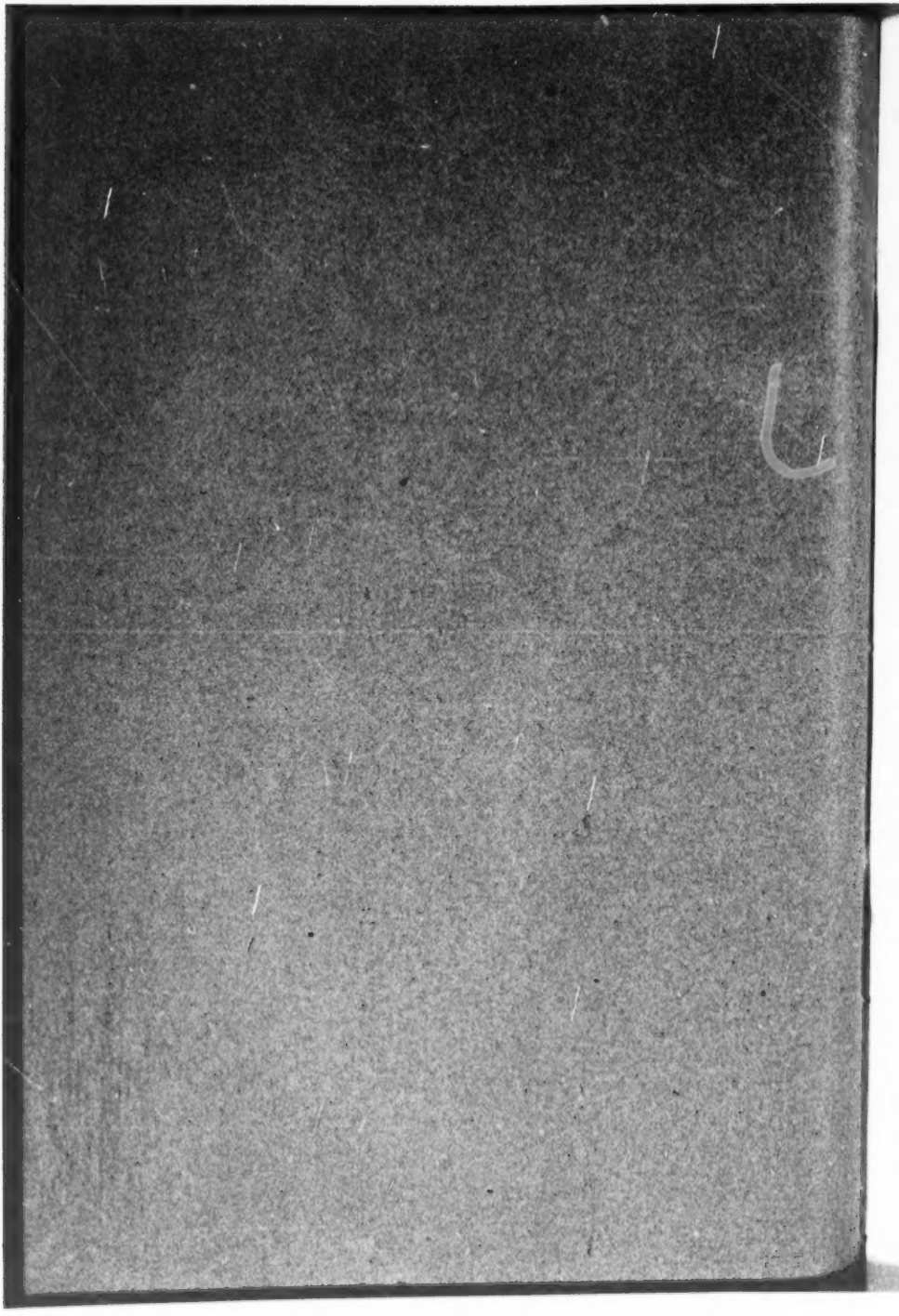
JAMES H. McKENNEY,
Clerk.

In the Supreme Court of the United States.

OCTOBER TERM, 1903.

THE UNITED STATES, PETITIONERS,
v.
SING TUCK OR KING DO AND THIRTY-one others, respondents. } No. 591

PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT AND BRIEF THEREON.



In the Supreme Court of the United States.

OCTOBER TERM, 1903.

THE UNITED STATES, PETITIONERS,
v.
SING TUCK OR KING J[illegible] AND THIRTY-one others, respondents.
No. ——.

PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT, AND BRIEF THEREON.

The Solicitor-General, on behalf of the United States, respectfully prays the court to issue a writ of certiorari to review a decree of the United States circuit court of appeals for the second circuit, entered in the above-entitled case, wherein it reversed the action of the circuit court of the United States for the northern district of New York in dismissing a writ of *habeas corpus* sued out in behalf of respondents, and remanded the cause for inquiry into the status of the individual relators.

STATEMENT.

These Chinese persons came from China by way of Vancouver, over the Canadian Pacific Railroad, and made application for admission at the Canadian line. Upon examination, admission was denied, and at the time the writ of *habeas corpus*

was issued the Chinamen were being held at the detention house at Malone, N. Y., awaiting an opportunity to return them to China. (Rec., p. 16.) The petition for the writ (made upon information and belief by the Chinamen's attorney) alleges "that the relators are Chinese persons born in the United States and are citizens thereof;" "that such detention is illegal and without any authority of law whatever;" that they have been denied admission to the United States by the Chinese inspector in charge, who had no authority to pass upon the rights of "said Chinese persons to enter the United States, but has only authority to pass upon the claim upon (or) the right of aliens seeking to enter the United States." Copies of the orders made by the officer denying admission to the relators were attached to and made part of the petition. They stated in each case that the Chinaman refused to furnish the names of any witnesses or to answer any questions put to him by the Chinese inspector, excepting as to his name and the fact that he sought admission to the United States. (p. 7.)

The writ was granted by the district judge for the northern district of New York, and return duly made. (p. 16.)

The duly certified records of the examinations of the several petitioners before the immigration officers show that only five out of the thirty-two, namely, Non Chock (p. 22), Jane Lop (p. 62), Sing Hoy (p. 72), Gong Sing (p. 80), and Dew Ark

(p. 46), even stated they were born in the United States, and at that time twenty-seven set up no claim of citizenship whatever. The five who stated they were born in the United States failed to support that claim by any documentary evidence or otherwise, and no prudent inspection officer would have been justified in accepting it as true. They failed to make any showing of right to enter worthy of serious consideration.

After having been once examined all the applicants for admission were recalled and asked as to their identity and whether they had been examined on a prior day, shown photographs of themselves, and asked if the same were correct, to both of which questions they replied in the affirmative.

Twenty-seven of the relators gave their names, stated that they then made application to enter the United States, and refused to answer, substantially, every other important question propounded to them, or to give any information concerning themselves. They not only failed to show that they were born in the United States, but made no claim of such birth or of citizenship therein (pp. 12 et seq.).

Upon motion by the United States to dismiss the writ, and after careful consideration, the circuit court entered a decree adjudging the detention of the Chinamen by the inspector to be lawful and ordering that the petition be denied, that the writ of habeas corpus be dismissed, and that all of

said Chinamen be remanded to the custody of the Chinese inspector, to be dealt with according to law.

An appeal was taken to the circuit court of appeals, and that court, on January —, 1904, reversed the action of the circuit court and directed that the cause be remanded "for inquiry into the status of the individual relators."

Printed copies of the laws, treaty, and regulations relating to the exclusion of Chinese, compiled by the Department of Commerce and Labor, are filed herewith.

SPECIAL REASONS WHY CERTIORARI SHOULD ISSUE.

Since the decision of this court in *United States* v. *Wong Kim Ark* (169 U. S., 649, 1898), holding that Chinese born within the United States are citizens thereof, Chinamen arriving from China and seeking admission here have habitually set up the claim that they were born in this country, and have in scores of instances, by barefaced perjury, sought to establish such contention. There is cause to think that by reason of inability to expose the fraud very many of such persons have wrongfully secured admission.

The Government has reason to believe that there now exists an organization for the purpose of bringing Chinese laborers illegally to this country, well equipped with funds, and directed by shrewd and unscrupulous agents. The plan of procedure,

at this time the most favored and generally acted upon, is this:

Laborers from China are brought in ships landing at Vancouver, and from thence in bond by the Canadian Pacific Railroad to Malone, on the northern border of New York, where they are delivered at the detention house established there by the Bureau of Immigration. Somewhere, either before leaving China or during the journey, these laborers are drilled to say, when examined by the immigration officer, that they were born in the United States, and then to decline to answer further material questions. The officers stationed at Malone are morally sure that the claim of citizenship is utterly false, and, as no credible evidence is presented to support it, the applicant is of necessity refused admission. Immediately after such refusal, following the well-arranged programme, an attorney, "upon information and belief," swears to a petition alleging that the Chinamen are citizens of the United States, and secures the issuance of a writ of habeas corpus. Then the custom is to demand that each man be given an entirely new hearing before the court or a commissioner as to whether or not he was born in the United States, and upon that hearing a properly prepared father or uncle and other unscrupulous Chinamen are produced as witnesses to prove such birth.

Hundreds of these cases have been brought in the United States courts at San Francisco and along the Canadian border. They have been, and are, causing a vast amount of trouble for the courts and the officers of the Government, the expense entailed by reason of them is very large, and the defeat of the manifest purpose of the exclusion laws is deplorable.

I am informed by the Department of Commerce and Labor that during the six months ending December 31, 1903, 336 applications were made for entry at the port of Malone by Chinamen claiming birth in the United States, and that writs of *habeas corpus* were sued out on behalf of 326. During the same period writs were issued in behalf of 115 alleged Chinese citizens who applied for entry at San Francisco.

In opposition to the practice above outlined, and in an effort to defeat it, the Government has contended that when a Chinaman presents himself to an immigration officer at the frontier asking for admission into the United States upon the ground that he was born therein, that officer has a right to pass upon his claim of citizenship as upon any other question of fact; that an adverse decision thereon, subject to an appeal to the Secretary of Commerce and Labor, is binding upon the applicant and, except in extraordinary cases, is not subject to review by the courts upon writ of habeas corpus. This view of the law has been

sustained in an opinion rendered by United States District Judge Wheeler, of the district of Vermont, in the case of *In re Moy Quong Shing* (125 Fed. Rep., 641), and by Judge Ray in the opinion which appears in the record.

United States District Judge De Haven, northern district of California, decided (January 14, 1904) against the Government's contention, following what he regarded as the opinion of the United States circuit court of appeals for the ninth circuit in *Gee Fook Sing* v. *United States* (49 Fed. Rep., 146). His opinion is printed as an appendix hereto.

More than two hundred Chinamen who claim birth in the United States and a trial of that issue before the court are now confined at Malone. That number will probably be largely increased in the near future by additional arrivals from vessels landing at Vancouver.

The act of 1892 (section 5) expressly prohibits the courts from granting bail to Chinese persons seeking to land in the United States to whom that privilege has been denied.

I am informed that the detention house at Malone is already full to overflowing with Chinese; that considerable sickness has existed amongst them, resulting in a number of deaths, and that the condition of affairs there is exceedingly bad, with a tendency to grow worse.

The orderly administration of the Chinese exclusion laws, if the decision of the circuit court of appeals in the present cause is to be followed, it now appears will be well nigh impossible, and it is a matter of the gravest concern to know at an early day the correct interpretation of these laws and the duties and powers of the officers of the Government charged with their enforcement.

Under "An act to regulate the immigration of aliens into the United States," passed March 3, 1903, it is made the duty of immigration inspectors to exclude from the United States all aliens of certain specified classes, and it is of great importance to know whether, under this law, as well as under the Chinese-exclusion acts, the mere unsupported assertion of citizenship deprives the immigration officer of all further right to investigate the applicant's case, and whether every such case may be brought before the courts alone upon such unsupported statement. Questions arising under the two acts seem to be substantially the same and their importance is manifest. The officers of the Immigration Bureau are diligent in endeavoring to carry out the provisions of the law with the enforcement of which they are charged, but they have been greatly hindered by the rulings of the lower Federal courts, and find themselves in a maze of difficulties from which they can not hope to be finally released until this court settles the points in issue.

ARGUMENT.

The circuit court of appeals had no jurisdiction of the appeal from the circuit court and should have dismissed it.

It appears from the record that the present controversy "is one which does really and substantially involve a dispute or controversy as to a right which depends on the construction or application of the Constitution, or some law or treaty of the United States." The appellate jurisdiction of this court in respect of the same was therefore exclusive, and the appeal to the circuit court of appeals was improper. (*American Sugar Refining Company* v. *New Orleans*, 181 U. S., 277, 281; *Union and Planters' Bank* v. *Memphis*, 189 U. S., 71, 73.)

Upon the facts shown by the return, which were not controverted, the detention of the relators was manifestly proper, and the immigration officers would have been guilty of gross malfeasance if they had admitted the Chinamen.

The purpose of the Chinese exclusion acts is to *prevent* the landing of Chinese persons in the United States, except under peculiar circumstances necessary to be shown by applicants for admission. The inspection officers are charged with enforcing the laws, and it is their duty to exclude every such person who does not show himself entitled to entry under the law. If an inspection officer should permit the landing of any Chinaman who

did not in some satisfactory manner show such right, he would grossly violate his duty. Of the thirty-two men included in the present case, twenty-seven made to the immigration officer no show of right to enter; they did not even *claim* citizenship. The remaining five did say they were born in the United States, but failed to make any reasonable effort to support the claim and by their action made it incredible. The conditions were such as to make it the clear duty of the immigration officers to detain them. And as it was the duty of such officers under the law to detain, such detention was not illegal.

The purpose of a writ of habeas corpus is to inquire into the *legality* of the confinement, and unless the court find such confinement contrary to law the writ should be dismissed. *Ex parte Curtis*, 106 U. S., 375; *ex parte Crouch*, 112 U. S., 180; *Wales* v. *Whitney*, 114 U. S., 571; *Nishimura Ekiu* v. *United States*, 142 U. S., 662.

In order to discharge the Chinamen in whose behalf the writ was sued out in the present case, it would be necessary to hold that the immigration officers acted contrary to law in detaining them, and should have admitted them to entry.

As the relators had *voluntarily* applied for permission to come into the United States, the officer was compelled either to grant or refuse such permission. It would have been plainly a gross breach of his duty to have admitted them upon the facts

presented to him. It seems to follow clearly that their detention was in conformity to and not in violation of law.

When Chinese persons present themselves for admission into the United States it is the duty of immigration officers to pass upon their claims. If citizenship is alleged that, like other questions of fact, must be determined by such officers. Except, possibly, in extraordinary cases an adverse decision by the immigration officer is final, subject to an appeal to the Secretary of Commerce and Labor, and it can not be reviewed upon writ of habeas corpus.

If the *mere* statement by one possessing all the marks of a Chinaman and who has just arrived from China, that he was born in the United States ousts the immigration officer of all authority to inquire into the truth of his claim, then the purposes of the laws will be constantly defeated and the courts may expect to try thousands of cases where such pretensions are fraudulently set up.

When Congress passed the act of August 18, 1894, making a decision of the appropriate immigration officer adverse to the applicant final, it evidently intended to correct the evils growing out of writs of *habeas corpus* fraudulently sued out and to provide a speedy way of deciding questions concerning the right to admission and to prevent the very difficulties now confronting the Government officers.

Especial attention is called to the lucid opinion of Judge Ray in support of the decree entered in the circuit court, upholding the contention above announced (p. 87).

The circuit court of appeals relied in its opinion upon the authority of *Gee Fook Sing* v. *United States* (49 Fed. Rep., 146). That case was decided in January, 1892, *without argument*, and, so far as appears, the question now raised was not distinctly before the court. The case does not seem to have been regarded by counsel who appeared for respondents in the circuit court of appeals as of sufficient importance to justify its citation in their brief.

Chin Bak Kan v. *United States* (186 U. S., 193, 200) was a proceeding begun before a commissioner to deport a Chinaman already in the United States, and in reply to a contention made in behalf of the defendant, Chief Justice Fuller, delivering the opinion of the court, said:

> But it is argued that the commissioner had no jurisdiction to act because the claim of citizenship was made. The ruling in *United States* v. *Wong Kim Ark* (169 U. S., 649) was to this effect: "A child born in the United States, of parents of Chinese descent, who, at the time of his birth, are subjects of the Emperor of China, but have a permanent domicile and residence in the United States, and are there carrying on business, and are not employed in any diplomatic or official capacity under the

> Emperor of China, becomes at the time of his birth a citizen of the United States." It is impossible for us to hold that it is not competent for Congress to empower a United States commissioner to determine the various facts on which citizenship depends under that decision.

If a commissioner, under such circumstances, had jurisdiction to pass on the question of citizenship, how much clearer is the right of the immigration officer, in view of the act of 1894 making his action final, in a case where the Chinaman voluntarily applies to him for permission to enter the country. What is the immigration officer to do in such case if he has no right to decide the question presented?

In the *Japanese Immigrant case* (189 U. S., 97), Justice Harlan, delivering the opinion of the court, said:

> That Congress may exclude aliens of a particular race from the United States; prescribe the terms and conditions upon which certain classes of aliens may come to this country; establish regulations for sending out of the country such aliens as come here in violation of law; and commit the enforcement of such provisions, conditions, and regulations exclusively to executive officers, without judicial intervention, are principles firmly established by the decisions of this court. (*Nishimura Ekiu* v. *United States*, 142 U. S., 651; *Fong Yue Ting* v.

United States, 149 U. S., 698; *Lem Moon Sing* v. *United States*, 158 U. S., 538; *Wong Wing* v. *United States*, 163 U. S., 228; *Fok Yung Yo* v. *United States*, 185 U. S., 296, 305.)

Does the mere unsupported statement by a Chinaman that he was born in the United States oust the immigration officer of jurisdiction to inquire into his claim, make it unlawful for such officer to detain him, and necessitate an investigation by the courts? The Government thinks that to answer in the affirmative would emasculate the law, and that no such conclusion is permissible.

For the foregoing reasons I respectfully submit that the writ should be granted.

HENRY M. HOYT,
Solicitor-General.

J. C. MCREYNOLDS,
Assistant Attorney-General.

APPENDIX.

In the district court of the United States, northern district of California.

IN THE MATTER OF CHIN BAK BONG, on habeas corpus.

DE HAVEN, District Judge: In this proceeding under the writ of *habeas corpus*, the petitioner asks for the release of one Chin Bak Bong, alleged to be unlawfully restrained of his liberty by the general agent of the Occidental and Oriental Steamship Company. The petition alleges that Chin Bak Bong was a passenger on the steamer *Galelic*, and that it is claimed by the agent of the Occidental and Oriental Steamship Company that "said passenger is a subject of the Emperor of China, and must not and can not be allowed to land under the provisions of the act of Congress of May 6, 1882, entitled "An act to execute certain treaty stipulations relating to Chinese," and the acts amendatory thereof and supplemental thereto, and particularly the act of Congress entitled "An act to prohibit the coming into and regulate the residence within the United States, its territory and all territory under its jurisdiction, and the District of Columbia, of Chinese persons of Chinese descent, approved April 29, 1902." It is further alleged that "the said passenger does not come within the restrictions of said act or acts, but on the contrary * * * that the said passenger was born in the city and county of San Francisco,

State of California, and is a citizen of the United States." It is further alleged, in compliance with the rule of this court in relation to applications for writs of habeas corpus in this class of cases, "that the said passenger has applied for permission to enter the United States to the appropriate custom or immigration official and said application has been denied." The United States attorney has intervened in behalf of the United States and demurred to the petition upon the ground, "that the court is without jurisdiction to try and determine the same," and has also filed a motion to dismiss the petition upon the ground that the court is without jurisdiction "to hear or try any issues of fact or of law raised or involved in said petition for a writ of habeas corpus in this, to wit: That the return to the said writ of habeas corpus shows that the status of the above named Chin Bak Bong as a citizen of the United States, and his right to enter the United States on the grounds of citizenship by virtue of his birth in the United States, was fully presented, investigated, and determined by the Commissioner of Immigration."

The question of the jurisdiction of the court in a proceeding like this, to inquire whether a person of Chinese descent was in fact born in the United States and by reason of such birth entitled to return to the United States after a temporary absence therefrom, received careful consideration by Judge Morrow in the case of *In re Tom Yum* (64 Fed., 485), and the conclusion reached was that there is such jurisdiction. The cases of *In re Chin Yuen Sing* (65 Fed., 572), *In re Jew Wong Loy* (91 Fed., 240), and *Gee Fook Sing* v. *United States* (49 Fed.

146) are to the same effect. The case last cited was decided by the circuit court of appeals for this circuit, and in its opinion the court used the following language:

> We have considered all the questions of law and fact which we find involved, and our conclusions are that, inasmuch as the fourteenth article of the amendments to the Constitution of the United States declares that all persons born in the United States, and subject to the jurisdiction thereof, are citizens of the United States, and of the State wherein they reside, the laws excluding immigrants who are Chinese laborers are inapplicable to a person born in this country, and subject to the jurisdiction of its government, even though his parents were not citizens, nor entitled to become citizens, under the laws providing for the naturalization of aliens; that any person alleging himself to be a citizen of the United States, and desiring to return to his country from a foreign land, and that he is prevented from doing so without due process of law, and who on that ground applies to any United States court for a writ of *habeas corpus*, is entitled to have a hearing and a judicial determination of the facts so alleged; and that no act of Congress can be understood or construed as a bar to such hearing and judicial determination.

In my opinion the cases above cited were correctly decided, and the demurrer to the petition will be overruled, and the motion to dismiss denied.

(Indorsed:) Filed January 14, 1904. George E. Morse, clerk.

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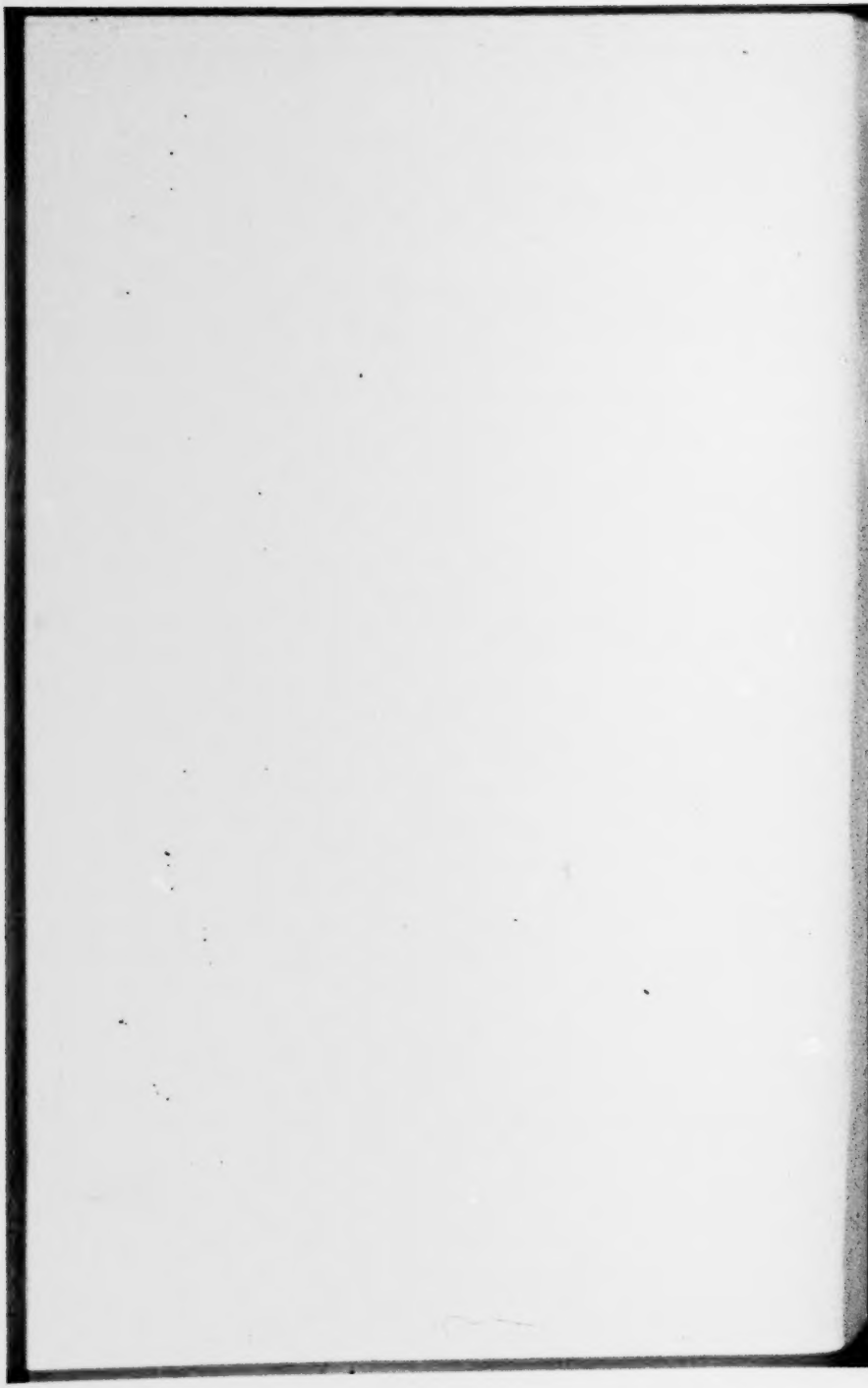

In the Supreme Court of the United States.

OCTOBER TERM, 1903.

THE UNITED STATES, PETITIONERS,
v.
SING TUCK OR KING DO AND THIRTY-one others, respondents.
No. 591.

MOTION TO ADVANCE.

The Solicitor-General, on behalf of the United States, respectfully moves the court to advance the above-entitled cause on the docket for early hearing.

The question involved is the right of the immigration officers to detain in custody and to pass upon the right to land in the United States of the petitioners, who claim that they are "Chinese persons born in the United States and are citizens thereof," and that the immigration officers have authority only to pass upon the "right of *aliens* seeking to enter the United States." Upon the petition of the United States a writ of certiorari was granted by the court on the 29th of February last, to which petition reference is made for a more detailed account of the matters involved.

The case is an appeal in a habeas corpus proceeding and involves directly 32 Chinese persons. Indirectly there are involved the rights of a large number of Chinese, in whose behalf habeas corpus proceedings have been instituted in the northern district of New York and at San Francisco. At Malone, N. Y., alone, more than 200 Chinamen are at the present time confined awaiting the determination of this case. The detention station is full to overflowing and considerable sickness has broken out among the inmates.

In view of the fact that this is a test case, that the rights of a large number of other persons are involved, that these persons are held in custody awaiting the determination of the case, and the fact that its decision will tend to bring about an orderly administration of the Chinese exclusion laws, I submit that the case is one which merits the consideration of the court at the present term.

Notice of this motion has been served upon counsel for the respondents.

HENRY M. HOYT,
Solicitor-General.

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In the Supreme Court of the United States.

OCTOBER TERM, 1903.

THE UNITED STATES, PETITIONER,
v.
SING TUCK OR KING DO AND THIRTY-ONE others, respondents.
No. 591.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

BRIEF FOR PETITIONER.

STATEMENT.

In October, 1903, R. M. Moore, an attorney claiming authority therefor, filed in the circuit court for the northern district of New York a petition in his own name for a writ of *habeas corpus* in behalf of Sing Tuck and thirty-one other Chinese persons detained by the United States Chinese inspector at Malone. The petition, which is very brief, alleges "that the relators are Chinese persons born in the United States and are citizens thereof," "that such detention is illegal and without any authority of law whatever;" that they have been denied admission to the United States by the Chinese inspector in charge, who had no authority to pass upon

the rights of "said Chinese persons to enter the United States, but has only authority to pass upon the claim upon (or) the right of aliens seeking to enter the United States;" and it prays that a writ of *habeas corpus* issue and relators be discharged. (R., 1.) All statements of the petition were made as "upon information and belief" by Moore, and his affidavit thereto only shows that "he believes" the same to be true, without anything to indicate the ground of such belief or the source of his knowledge. Copies of orders made by the officer denying admission to respondents were attached to and made part of petition. They were substantially the same in all cases, except as to names, and as follows:

(R. 2.) OFFICE OF CHINESE INSPECTOR,
Brooklyn, N. Y., October 13, 1903.

In re Sang Chong, No. 255, Ex. S. S. Empress of India, September 23, 1903.

The above-named applicant, Sang Chong, whose photograph is attached to the accompanying examination, presented himself in person at the Malone detention house, September 23, 1903. At that time he was requested by Chinese Inspector Thomas D'Arcy to make a voluntary statement relative to his right to be admitted to the United States, or to furnish the names of any witnesses by whom he would be able to prove such right, but refused to do either, and upon being further questioned—in order that we might secure data to institute an investigation—refused to answer all questions

excepting as to his name and the fact that he sought admission to the United States.

In view of the fact that this applicant is a person of the Chinese race, speaking the Chinese language, and having just arrived from China, having been given an opportunity to establish his right to enter and having refused to avail himself of such right, and as the burden of proof is upon him to establish his right to enter the United States and having failed to do so, he is denied admission.

F. W. BERKSHIRE,
Officer in Charge.

The writ of *habeas corpus* was granted as prayed by Hon. George W. Ray, district judge, and return was made November 10, 1903, as to each person named therein. The returns show (R., 4–6)—

That respondent, D'Arcy, is a sworn Chinese inspector acting under direction and authority of the Secretary of Commerce and Labor, stationed at Malone, New York, near the border line between the United States and Canada, and in charge of the detention quarters in which all Chinese persons making application to enter the United States are detained pending inquiry by inspection officers.

That before the writ issued the parties named therein—being Chinese persons and having immediately come from China by way of Vancouver, over the Canadian Pacific Railroad—made application to enter the United States at the Canadian line. For convenience, pending inquiry into the rights of each, they were confined in the detention house at Malone, a port of

entry for Chinese immigrants designated by the Secretary of the Treasury under act of Congress.

That upon examination by officers designated by law respondents were denied admission and were being held awaiting opportunity to return them to China.

That such persons, having presented themselves at Malone and having made application to enter the United States, were given opportunity by the immigration officer to make such voluntary statements as they might desire relative to their rights to be admitted, were informed that they might produce any witnesses by whom such rights could be supported, and full opportunity was given to produce any evidence they had or could procure touching the right of entry, but they refused to answer any questions touching such right or to furnish names of any witnesses by whom the same could be established, or to produce any papers or proof, oral or written, relating thereto. With the returns are certified copies of the proceedings at the examinations.

That all evidence produced by respondents was duly considered by the inspection officer in charge, and he, being of the opinion that they were Chinese persons not entitled to enter or remain in the United States, so adjudged and denied them admission.

In the return are set out certain rules and regulations promulgated by the Department of Commerce and Labor governing admission of Chinese into the United States. (R. 5, 6.)

The respondent, upon information and belief, denies that relators are citizens of the United

States, and alleges they are alien Chinese laborers not entitled to enter therein, and that their detention is proper. (R. 6.)

That immediately upon the decision of the Chinese inspector denying the right of entry, respondents were duly informed thereof and of their right to take an appeal to the Secretary of Commerce and Labor. (R., 59.)

The records of respondents' examinations before immigration officers show that five, namely, Non Chock, Jane Lop, Sing Hoy, Gong Sing, and Dew Ark stated they were born in the United States. At that time twenty-seven set up no claim of citizenship, and refused to answer substantially every question propounded to them. The five first mentioned failed to support their claims by any credible evidence, and no prudent inspector would have been justified in believing them. (R., 13–43–50–56–32.)

After having been once examined all the applicants were recalled and asked as to their identity and whether they had been examined on a prior day, shown photographs of themselves, and asked if the same were correct, to both of which questions they replied in the affirmative. The examinations are fully set out in the record. None of respondents asked for an appeal to the Secretary of Commerce and Labor.

When the return was made the United States district attorney intervened on behalf of respondent below and the United States and moved to dismiss the writ on the following grounds (R., 59):

First. This court has no jurisdiction to review the determination of the immigration officers

of the United States in denying to the petitioners herein the right to enter the United States.

Second. That the determination of the immigration officers on the question of the right of the petitioners to enter the United States is final and conclusive, no appeal having been taken therefrom to the Secretary of Commerce and Labor.

Third. That it is not established by the petition and return that the petitioners, or any of them, have lawful right to enter the United States.

Fourth. That the facts set forth in the petition and return show that the petitioners have no legal right to enter the United States.

Fifth. That the petitioners are not unlawfully detained or deprived of their liberty.

The circuit court was of opinion that the motion to dismiss should be granted, and a decree was accordingly entered adjudging the detention of respondents lawful, and ordering that the petition be denied, the writ of habeas corpus dismissed, and all of said Chinamen remanded to the custody of the inspector, to be dealt with according to law. (R., 75.)

From the action of the circuit court an appeal was prayed and granted to the United States circuit court of appeals for the second circuit. That court, on the 25th of January, 1904, heard the cause and thereafter reversed such action and directed that the cause be remanded "for inquiry into the status of the individual relators." (R., 81.)

A writ of *certiorari* was granted to the circuit court of appeals, the cause brought to this court, and thereafter advanced for hearing.

Printed copies of the laws, treaties, and regulations relating to exclusion of Chinese, compiled by the Department of Commerce and Labor, are filed herewith.

The act of Congress, February 14, 1903 (32 Stat., 825), created the Department of Commerce and Labor, intrusted to it enforcement of the Chinese-exclusion acts, and transferred to its Secretary the duties and powers relating thereto formerly given to the Secretary of the Treasury.

Act of August 18, 1894 (28 Stat., 390):

> An act making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and ninety-five, and for other purposes.
>
> *Be it enacted, etc.,*
>
> * * * * *
>
> In every case where an alien is excluded from admission into the United States under any law or treaty now existing or hereafter made, the decision of the appropriate immigration or customs officers, if adverse to the admission of such alien, shall be final, unless reversed on appeal to the Secretary of the Treasury.
>
> * * * * *

The contention in behalf of respondents may be summarized under the points specified in brief filed for them in the circuit court of appeals as follows:

Point 1. A person of Chinese descent born within the United States is a citizen thereof.

Point 2. Citizenship is a right. Every person claiming it has the constitutional right to have it determined judicially in a constitutional court.

Point 3. If the contention of the Government is sustained, then the constitutional right to a writ of *habeas corpus* is denied.

Point 4. The pretended trial and adjudication by the immigrant inspector in these cases was not due process of law.

Point 5. There was no evidence before the inspector upon which he could base a judicial determination.

Point 6. A Chinese inspector is in no sense a judicial officer.

SPECIFICATION OF ERRORS.

The circuit court of appeals erred in reversing the order of the circuit court which dismissed the writ of *habeas corpus*, and remanding the cause for inquiry into the status of the individual relators.

ARGUMENT.

Did the circuit court of appeals have jurisdiction of the appeal from the circuit court?

It appears from the record that the present controversy "is one which does really and substantially involve a dispute or controversy as to a right which depends on the construction or application of the Con-

stitution, or some law or treaty of the United States." Was not the appellate jurisdiction of this court in respect of the same, therefore, exclusive, and the appeal to the circuit court of appeals improper?

American Sugar Refining Company v. *New Orleans* (181 U. S., 277, 281).

> The right to two appeals would exist in every case (the litigated matter having the requisite value) where the jurisdiction of the circuit court rested solely on the ground that the suit arose under the Constitution, laws or treaties of the United States, if such cases could be carried to the circuit court of appeals, for their decisions would not come within the category of those made final.
>
> As, however, a case so arises where it appears on the record, from plaintiff's own statement, in legal and logical form, such as is required by good pleading, that the suit is one which does really and substantially involve a dispute or controversy as to a right which depends on the construction or application of the Constitution, or some law or treaty of the United States * * *; and as those cases fall strictly within the terms of section 5, the appellate jurisdiction of this court in respect of them is exclusive.

Union and Planters' Bank v. *Memphis* (189 U. S., 71, 73).

> Diversity of citizenship did not exist, and the jurisdiction of the circuit court rested solely on the ground that the cause of action arose under the Constitution of the United States. The

appeal lay directly to this court under section 5 of the judiciary act of March 3, 1891, and not to the circuit court of appeals. * * * Nevertheless an appeal having been prosecuted to the latter court and having there gone to decree, an appeal was allowed to this court because the judgment was not made final in that court by section 6 of the act. But the case being here, and the jurisdiction of the circuit court having depended on the sole ground that it arose under the Constitution, we are constrained to reverse the decree of the circuit court of appeals, not on the merits, but by reason of the want of jurisdiction in that court. If this were not so, the right to two appeals would exist in every similar case notwithstanding, as we have repeatedly held, that such was not the intention of the act.

The original petition did not show probable cause justifying the issuance of the writ. And upon the undenied facts set forth in the return it was the manifest duty of the immigration officers to detain respondents.

The Revised Statutes provide:

(Sec. 754.) Application for writ of *habeas corpus* shall be made to the court, * * * by complaint in writing, signed by the person for whose relief it is intended, setting forth the facts concerning the detention of the party restrained. * * * The facts set forth in the complaint shall be verified by the oath of the person making the application.

(Sec. 760.) The petitioner or the party imprisoned or restrained may deny any of the facts set forth in the return, or may allege any

other facts that may be material in the case. Said denials or allegations shall be under oath. * * *

(Sec. 761.) The court, or justice, or judge shall proceed in a summary way to determine the facts of the case by hearing the testimony and arguments, and thereupon to dispose of the party as law and justice require.

The direct course of all the later decisions, both English and American, is to establish the rule that probable cause must first be shown to obtain the writ of *habeas corpus*, whether it be granted at common law or under the statute.

Church on Habeas Corpus, sec. 92.
Ex parte Watkins, 3 Peters, 193.
Ex parte Milligan, 4 Wall., 2, 110.
Ex parte Royall, 117 U. S., 250.
Ex parte Terry, 128 U. S., 301.

At common law no evidence was necessary to support the return (to a writ of *habeas corpus*). It was deemed to import verity until impeached.

Hurd on Habeas Corpus, Book 2, c. 3, secs. 8, 9, 10.

Church on Habeas Corpus, secs. 122, 160, 170.

And this rule is not changed by any statute of the United States.

Crowley v. *Christensen*, 137 U. S., 86, 94.
Holden v. *Minnesota*, 137 U. S., 483, 491.

Church on Habeas Corpus—

(Sec. 160.) The return to a writ of *habeas corpus* imports verity until it is impeached; and

> when made under oath by a private individual, or not under oath by a public officer, in his official capacity, the facts therein stated will be taken as true, without reference to the allegations in the petition, unless an issue as to these facts is raised by an appropriate pleading on the part of the petitioner. This pleading is usually in the form of an answer denying the allegations of the return. The return should be responsive to the writ, and not to the petition upon which it is based. And where the return sets out in full the record of the proceedings under which the petitioner is held, it is a full and complete answer to every allegation contained in the petitioner's application for his discharge, and being admitted as true, negatives the same.
>
> (Sec. 162.) * * * But instead of waiting until the return is made, and then making answer to it, if petitioner anticipates the return and sets forth a response to it in his petition, an objection on this account will not prevail in the appellate court * * * if the allegations of the petition are full and explicit to the point, and are also made under oath.

The purpose of the Chinese exclusion acts and regulations adopted for making them effective is to *prevent* the landing of Chinese persons in the United States, unless it affirmatively appears that they are exempt from the general provisions because officials, teachers, students, merchants, travelers, or citizens of the United States. Inspection officers are charged with enforcing such laws and regulations, and it is their duty to

exclude every Chinaman who does not show himself entitled under the law to enter. If officers should permit entry of any one of that race without demanding satisfactory proof of facts, they would grossly violate their duty. An examination of the laws will make this manifest; and as to all Chinese except such as claim birth in the United States, I do not understand respondents deny this theory of the law.

In order that the immigration laws may be carried out it seems absolutely necessary that inspection officers shall have the right, in the first instance, to pass upon the claims of all persons who present themselves on the border seeking admission into the United States, and that such applicants shall be required to present to them the facts in support of their claims. The immigration officer is the tribunal designated by Congress to try questions relating to admission, and before the courts can undertake to inquire into his action it is necessary, at the very least, to show that upon the case as made before him his action was erroneous.

From the original petition it appears that respondents were Chinese persons, speaking the Chinese language, who had just arrived from China, and who, having presented themselves in person to the inspector, were given full opportunity to establish a right to enter the United States, but refused to give any substantial information in reference thereto.

The petition alleges that respondents were born within the United States and are therefore entitled to enter, but it in no way suggests that any proof on that subject was offered to the inspector or a prima facie

case made out before him. The right of entry is based upon the single claim of American citizenship, asserted so far as it shows for the first time in the petition presented to the court, and wholly without reference to anything said or done before the inspector.

Upon such a petition the writ should not have been granted in the first instance.

The return shows that of the 32 Chinamen examined, 27 made then no claim of birth in the United States and no show of right to enter therein. Five said they were born in the United States, but refused to give information to support such claim, and by their action made it incredible.

The original petition asserted citizenship upon information and belief. The return denied, upon information and belief, that respondents were citizens, and stated that they were alien Chinese laborers not entitled to entry. No denial was made of any facts set out in the return nor was application made to reply thereto in any way. Such facts must, therefore, be taken as true and the action of the court in dismissing the writ can not be held to be error. The very ground upon which the petition was based was denied and there was nothing to put the denial in issue.

In any view of the facts brought by the return before the court it was the clear duty of the immigration officers to detain all of the respondents, and as it was their duty so to do, such detention could not be illegal. It follows, wholly irrespective of the question

as to the finality of findings by immigration officers under the act of 1894, that the writ in the present case was properly dismissed, no illegal detention having been shown.

Ex parte Watkins (3 Peters, 201)—

> The purpose of a writ of *habeas corpus* is to inquire into the *legality* of the confinement, and unless the court finds such confinement contrary to law the writ should be dismissed.

Wales v. *Whitney* (114 U. S., 571)—

> The writ of *habeas corpus* is not a writ of error, though in some cases in which the court issuing it *has* appellate power over the court by whose order the petitioner is held in custody it may be used with the writ of *certiorari* for that purpose. In such case, however, as the one before us it is not a writ of error. Its purpose is to enable the court to inquire, first, if the petitioner is restrained of his liberty. If he is not, the court can do nothing but discharge the writ. If there is such restraint, the court can then inquire into the cause of it, and if the alleged cause be unlawful, it must then discharge the prisoner.

Ex parte Curtis (106 U. S., 375)—

> Our inquiries in this class of cases are limited to such objections as relate to the authority of the court to render the judgment by which the prisoner is held. We have no general power to review the judgments of the inferior courts of the United States in criminal cases, by the use of the writ of *habeas corpus* or otherwise.

> Our jurisdiction is limited to the single question of the power of the court to commit the prisoner for the act of which he has been convicted. (*Ex parte Lange*, 18 Wall., 163; *Ex parte Rowland*, 104 U. S., 604.)

Nishimura Ekiu v. *United States* (142 U. S., 651, 662)—

> A writ of *habeas corpus* is not like an action to recover damages for an unlawful arrest or commitment, but its object is to ascertain whether the prisoner can lawfully be detained in custody; and if sufficient ground for his detention by the Government is shown, he is not to be discharged for defects in the original arrest or commitment.

Carter v. *McClaughry* (183 U. S., 381).

The original petition alleged the detention of respondents to be "illegal and without any authority of law whatever" because they were born in the United States and citizens thereof, and the inspection officers had no authority to pass upon the rights of such persons to enter the United States, their authority being limited to pass upon claims of aliens seeking to enter.

In order to discharge respondents it would be necessary to hold that the immigration officer acted contrary to law in detaining them and should have admitted them to entry. As they had *voluntarily* applied for permission to come into the United States, the officer was compelled either to grant or refuse such permission. It would have been plainly a gross breach of his duty

to have admitted them upon the facts presented. Their detention was in conformity to and not in violation of law.

If the mere unsupported statement of a Chinaman that he was born in the United States entitles him to enter the exclusion acts will prove farcical. It may be, in an extraordinary case, that one who has in good faith made a fair effort to prove citizenship before an immigration officer and has shown facts upon which admission should be granted him may have a writ of *habeas corpus* to correct the wrong done him by the officer, but he must certainly first show that he has suffered wrong. The immigration officer is not a mere figure to be treated without consideration or "ignored."

If the petition and return in the present case had shown that upon the facts presented to the inspector respondents should have, as a matter of law, been admitted, as in *Gonzales* v. *Williams* (192 U. S., 1), then

Where the law has confided to a special tribunal the authority to hear and determine certain matters arising in the course of its duties, the decision of that tribunal, within the scope of its authority, as to questions of fact is conclusive upon all others. Pg. 17

This doctrine has been frequently applied to the action of administrative officers in the Land Department. (*Johnson* v. *Towsley*, 13 Wall., 83; *Smelting Company* v. *Kemp*, 104 U. S., 636.)

The courts have power to grant relief when the special tribunal acts contrary to law, or possibly where a manifest wrong has been done, and only in such cases. (*Burfenning* v. *Chicago, St. Paul, etc., Railroad*, 163 U. S., 321, 323; *School of Magnetic Healing* v.

When Chinese persons present themselves for admission into the United States it is the duty of immigration officers to pass upon their claims. If citizenship is alleged, that, like other questions of fact, must be determined by such officers. Except, possibly, in extraordinary cases an adverse decision by the immigration officer is final, subject to an appeal to the Secretary of Commerce and Labor, and it can not be reviewed upon writ of habeas corpus.

None of the respondents took or asked an appeal to the Secretary of Commerce and Labor.

If the *mere* statement by one possessing all the marks of a Chinaman and who has just arrived from China, that he was born in the United States ousts the immigration officer of all authority to inquire into the truth of his claim, then the purposes of the laws will be constantly defeated and the courts may expect to try thousands of cases where such pretensions are fraudulently set up.

When Congress passed the act of August 18, 1894, making a decision of the appropriate immigration officer adverse to the applicant final, it evidently intended to correct the evils growing out of writs of *habeas corpus* fraudulently sued out, to provide a speedy way of deciding questions concerning the right to admission and to prevent the very difficulties now confronting the Government officers.

Especial attention is called to the opinion of Judge Ray in support of the decree entered in the circuit court, upholding the contention above announced. (R. 60.)

Reference is also made to the opinion of Judge Wheeler in *In re Moy Quong Shing* (125 Fed., 641), sustaining the views here suggested, and to the opinion of Judge De Haven *In re Chin Bak Bong*, printed with petition for *certiorari*, holding to the contrary.

The circuit court of appeals relied in its opinion upon the authority of *Gee Fook Sing* v. *United States* (49 Fed. Rep., 146). That case was decided in January, 1892, *without argument*, and, so far as appears, the question now raised was not distinctly before the court. The case does not seem to have been regarded by counsel who appeared for respondents in the circuit court of appeals as of sufficient importance to justify its citation in their brief filed there.

The contention of respondents is that while, generally speaking, immigration officers have jurisdiction under the statutes to exclude a Chinaman not entitled to enter the United States because born therein, yet, if the Chinaman asserts his right to enter because of birth, the officer has no jurisdiction whatsoever to pass upon the question so raised or to demand that any proof upon the same be submitted. Indeed, as to 27 of the 32 respondents, it is claimed it was unnecessary for them to advise the immigration officer of their claim of citizenship, but that they could wholly ignore such officer.

In *Lem Moon Sing* v. *United States* (158 U. S., 547) this court overruled a similar contention, and Justice Harlan, who delivered the opinion, said in reference thereto (p. 547):

> That view, if sustained, would bring into the courts every case of an alien who claimed the right to come into the United States under some law or treaty, but was prevented from doing so by the executive branch of the Government. This would defeat the manifest purpose of Congress in committing to subordinate immigration officers and to the Secretary of the Treasury exclusive authority to determine whether a particular alien seeking admission into this country belongs to the *class* entitled by some law or treaty to come into the country, or to a *class* forbidden to enter the United States. Under that interpretation of the act of 1894 the provision that the decision of the appropriate immigration or customs officers should be *final*, unless reversed on appeal to the Secretary of the Treasury, would be of no practical value.

It would seem highly absurd to impose upon immigration officers the duty of excluding Chinamen not entitled to enter and at the same time take away from them all authority to pass upon facts. Such a construction of the law would result in ousting the officers of jurisdiction in substantially every case, as there is ample reason for supposing that few Chinamen applying for admission would not find it convenient to claim birth within the United States.

Chin Bak Kan v. *United States* (186 U. S., 193, 200) was a proceeding begun before a commissioner to deport a Chinaman already in the United States, and in reply to a contention made in behalf of the defendant, Chief Justice Fuller, delivering the opinion of the court, said:

> But it is argued that the commissioner had no jurisdiction to act because the claim of citizenship was made. The ruling in *United States* v. *Wong Kim Ark* (169 U. S., 649) was to this effect: "A child born in the United States, of parents of Chinese descent, who, at the time of his birth, are subjects of the Emperor of China, but have a permanent domicile and residence in the United States, and are there carrying on business, and are not employed in any diplomatic or official capacity under the Emperor of China, becomes at the time of his birth a citizen of the United States." It is impossible for us to hold that it is not competent for Congress to empower a United States commissioner to determine the various facts on which citizenship depends under that decision.

If a commissioner, under such circumstances, had jurisdiction to pass on the question of citizenship, how much clearer is the right of the immigration officer, in view of the act of 1894 making his action final, in a case where the Chinaman voluntarily applies to him for permission to enter the country?

What is the immigration officer to do in such case if he has no right to decide the question presented?

In the *Japanese Immigrant case* (189 U. S., 97) Justice Harlan, delivering the opinion of the court, said:

> That Congress may exclude aliens of a particular race from the United States; prescribe the terms and conditions upon which certain classes of aliens may come to this country; establish regulations for sending out of the country such aliens as come here in violation of law; and commit the enforcement of such provisions, conditions, and regulations exclusively to executive officers, without judicial intervention, are principles firmly established by the decisions of this court.

Does the mere unsupported statement by a Chinaman that he was born in the United States oust the immigration officer of jurisdiction to inquire into his claim, make it unlawful for such officer to detain him, and necessitate an investigation by the courts? The Government thinks that to answer in the affirmative would emasculate the law, and that no such conclusion is permissible.

The question involved in this suit is highly important to the Government, not only in reference to the exclusion of Chinese, but also as respects the orderly administration of the immigration act of 1903, the terms of which exclude absolutely certain aliens. If the bare assertion of citizenship by a Chinaman deprives the immigration officer of all right to investigate that question, and makes it necessary for the

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court in every case to pass upon the facts in an original proceeding, then it would seem to be necessary for the court in like manner to pass upon the facts in the case of every one of the hundreds of thousands of immigrants who annually come to the United States who should see fit to say he was born therein. Manifestly, such a ruling would render it impossible for the executive officers to carry into effect the purpose of Congress. It would, indeed, seem to follow necessarily that if the immigration officers have no right to pass upon the question of citizenship they have no right to detain any persons who claim such citizenship, and must admit them without further inquiry. If this be the law it will be practically impossible to enforce any exclusion act.

THE GOVERNMENT RESPECTFULLY ASKS THAT THE ACTION OF THE CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT BE REVERSED AND THE DECREE OF THE CIRCUIT COURT FOR THE NORTHERN DISTRICT OF NEW YORK, DISMISSING THE WRIT OF HABEAS CORPUS, BE IN ALL THINGS AFFIRMED.

J. C. MCREYNOLDS,
Assistant Attorney-General.

WASHINGTON, *April, 1904.*

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DEPARTMENT OF COMMERCE AND LABOR

LAWS, TREATY, AND REGULATIONS

RELATING TO

591

THE EXCLUSION OF CHINESE

DECEMBER, 1903

WASHINGTON
GOVERNMENT PRINTING OFFICE
1903

34005

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LAWS, TREATY, AND REGULATIONS

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DECEMBER, 1903

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other cause of disability beyond his control, such Chinese laborer shall be rendered unable sooner to return—which facts shall be fully reported to the Chinese consul at the port of departure, and by him certified, to the satisfaction of the collector of the port at which such Chinese subject shall land in the United States. And no such Chinese laborer shall be permitted to enter the United States by land or sea without producing to the proper officer of the customs the return certificate herein required.

—certificate.

Article III.

Privileged classes.

The provisions of this Convention shall not affect the right at present enjoyed of Chinese subjects, being officials, teachers, students, merchants or travellers for curiosity or pleasure, but not laborers, of coming to the United States and residing therein. To entitle such Chinese subjects as are above described to admission into the United States, they may produce a certificate from their Government or the Government where they last resided viséed by the diplomatic or consular representative of the United States in the country or port whence they depart.

Certificates.

Transit of laborers across country.

It is also agreed that Chinese laborers shall continue to enjoy the privilege of transit across the territory of the United States in the course of their journey to or from other countries subject to such regulations by the Government of the United States as may be necessary to prevent said privilege of transit from being abused.

Article IV.

Protection of Chinese.

In pursuance of Article III of the Immigration Treaty between the United States and China, signed at Peking on the 17th day of November, 1880 (the 15th day of the tenth month of Kwanghsii, sixth year), it is hereby understood and agreed that Chinese laborers or Chinese of any other class, either permanently or temporarily residing in the United States, shall have for the protection of their persons and property all rights that are given by the laws of the United States to citizens of the most favored nation, excepting the right to become naturalized citizens. And the Government of the United States reaffirms its obligation, as stated in said Article III, to exert all its power to secure protection to the persons and property of all Chinese subjects in the United States.

ARTICLE V.

Registration of resident laborers.

The Government of the United States, having by an Act of the Congress, approved May 5, 1892, as amended by an Act approved November 3, 1893, required all Chinese laborers lawfully within the limits of the United States before the passage of the first-named Act to be registered as in said Acts provided, with a view of affording them better protection, the Chinese Government will not object to the enforcement of such acts, and reciprocally the Government of the United States recognizes the right of the Government of China to enact and enforce similar laws or regulations for the registration, free of charge, of all laborers, skilled or unskilled (not merchants as defined by said Acts of Congress), citizens of the United States in China, whether residing within or without the treaty ports.

Reports to be furnished Chinese Government.

And the Government of the United States agrees that within twelve months from the date of the exchange of the ratifications of this Convention, and annually, thereafter, it will furnish to the Government of China registers or reports showing the full name, age, occupation, and number or place of residence of all other citizens of the United States, including missionaries, residing both within and without the treaty ports of China, not including, however, diplomatic and other officers of the United States residing or traveling in China upon official business, together with their body and household servants.

ARTICLE VI.

Duration of period of exclusion.

This Convention shall remain in force for a period of ten years beginning with the date of the exchange of ratifications, and if six months before the expiration of the said period of ten years neither Government shall have formally given notice of its final termination to the other, it shall remain in full force for another like period of ten years.

In faith whereof, we, the respective plenipotentiaries, have signed this Convention and have hereunto affixed our seals.

Done, in duplicate, at Washington, the 17th day of March, A. D. 1894.

WALTER Q. GRESHAM [SEAL.]
(Chinese Signature) [SEAL.]

And whereas the said Convention has been duly ratified on both parts, and the ratifications of the two Governments were exchanged in the city of Washington on the 7th day of December, one thousand eight hundred and ninety-four:

Now, therefore, be it known that I, GROVER CLEVELAND, President of the United States of America, have caused the said Convention to be made public, to the end that the same, and every article and clause thereof, may be observed and fulfilled with good faith by the United States and the citizens thereof.

In witness whereof I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the City of Washington this 8th day of December, in the year of our Lord, one thousand [SEAL.] eight hundred and ninety-four, and of the Independence of the United States the one hundred and nineteenth.

GROVER CLEVELAND.

By the President:

W. Q. GRESHAM,

Secretary of State.

ACT OF MAY 6, 1882.[a]

(22 Stat., p. 58.)

AN ACT to execute certain treaty stipulations relating to Chinese.

Whereas, in the opinion of the Government of the United States, the coming of Chinese laborers to this country endangers the good order of certain localities within the territory thereof: Therefore,

Amended by act of July 5, 1884.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That from and after the expiration of ninety days next after the passage of this act, and until the expiration of ten years next after the passage of this act, the coming of Chinese laborers to the United States be, and the same is hereby, suspended; and during such suspension it shall not be lawful for any Chinese laborer to come, or, having so come after the expiration of said ninety days, to remain within the United States.

Laborers excluded for period of ten years.

[a] Sections 2158–2163 of the Revised Statutes and the act of March 3, 1875 (1 Supp. R. S., 86, ch. 141), prohibit the importation of "cooleys" and women for immoral purposes.

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SEC. 2. That the master of any vessel who shall knowingly bring within the United States on such vessel, and land or permit to be landed, any Chinese laborer, from any foreign port or place, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not more than five hundred dollars for each and every such Chinese laborer so brought, and may be also imprisoned for a term not exceeding one year. Amended by act of July 5, 1884. Penalties.

SEC. 3. That the two foregoing sections shall not apply to Chinese laborers who were in the United States on the seventeenth day of November, eighteen hundred and eighty, or who shall have come into the same before the expiration of ninety days next after the passage of this act, and who shall produce to such master before going on board such vessel, and shall produce to the collector of the port in the United States at which such vessel shall arrive, the evidence hereinafter in this act required of his being one of the laborers in this section mentioned; nor shall the two foregoing sections apply to the case of any master whose vessel, being bound to a port not within the United States, shall come within the jurisdiction of the United States by reason of being in distress or in stress of weather, or touching at any port of the United States on its voyage to any foreign port or place: *Provided*, That all Chinese laborers brought on such vessels shall depart with the vessel on leaving port. Exceptions. Amended by act of July 5, 1884. —resident laborers. —vessels in distress. Identification.

[a]SEC. 4. That for the purpose of properly identifying Chinese laborers who were in the United States on the seventeenth day of November, eighteen hundred and eighty, or who shall have come into the same before the expiration of ninety days next after the passage of this act, and in order to furnish them with the proper evidence of their right to go from and come to the United States of their free will and accord, as provided by the treaty between the United States and China dated November seventeenth, eighteen hundred and eighty, the collector of customs of the district from which any such Chinese laborer shall depart from the United States shall, in person or by deputy, go on board each vessel having on board any such Chinese laborer and cleared or about to sail from his district for a foreign port, and on such vessel make a list of all such Chinese laborers, which shall be entered in registry-books Amended by act of July 5, 1884. Collector to make list of laborers departing.

[a]See act approved October 1, 1888, which prohibits the issuance of certificates of identity of Chinese laborers and declares void such certificates issued.

to be kept for that purpose, in which shall be stated the name, age, occupation, last place of residence, physical marks or peculiarities, and all facts necessary for the identification of each of such Chinese laborers, which books shall be safely kept in the custom-house; and every such Chinese laborer so departing from the United States shall be entitled to, and shall receive, free of any charge or cost upon application therefor, from the collector or his deputy, at the time such list is taken, a certificate, signed by the collector or his deputy and attested by his seal of office, in such form as the Secretary of the Treasury shall prescribe, which certificate shall contain a statement of the name, age, occupation, last place of residence, personal description and facts of identification of the Chinese laborer to whom this certificate is issued, corresponding with the said list and registry in all particulars. In case any Chinese laborer after having received such certificate shall leave such vessel before her departure he shall deliver his certificate to the master of the vessel, and if such Chinese laborer shall fail to return to such vessel before her departure from port the certificate shall be delivered by the master to the collector of customs for cancellation.

Certificate to be given laborer.

Amended by act of Oct. 1, 1888.

Certificate filed and canceled, when.

The certificate herein provided for shall entitle the Chinese laborer to whom the same is issued to return to and re-enter the United States upon producing and delivering the same to the collector of customs of the district at which such Chinese laborer shall seek to re-enter; and upon delivery of such certificate by such Chinese laborer to the collector of customs at the time of re-entry in the United States, said collector shall cause the same to be filed in the custom-house and duly canceled.

Departure by land.

Amended by act of Oct. 1, 1888.

—certificate.

SEC. 5. That any Chinese laborer mentioned in section four of this act being in the United States, and desiring to depart from the United States by land, shall have the right to demand and receive, free of charge or cost, a certificate of identification similar to that provided for in section four of this act to be issued to such Chinese laborers as may desire to leave the United States by water; and it is hereby made the duty of the collector of customs of the district next adjoining the foreign country to which said Chinese laborer desires to go to issue such certificate, free of charge or cost, upon application by such Chinese laborer, and to enter the same upon registry-books to be kept by him for the purpose, as provided for in section four of this act.

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Privileged class to be identified by certificate from Chinese Government.

Amended by act of July 5, 1884.

SEC. 6. That in order to the faithful execution of articles one and two of the treaty in this act before mentioned, every Chinese person other than a laborer who may be entitled by said treaty and this act to come within the United States, and who shall be about to come to the United States, shall be identified as so entitled by the Chinese Government in each case, such identity to be evidenced by a certificate issued under the authority of said Government, which certificate shall be in the English language or (if not in the English language) accompanied by a translation into English, stating such right to come, and which certificate shall state the name, title, or official rank, if any, the age, height, and all physical peculiarities, former and present occupation or profession, and place of residence in China of the person to whom the certificate is issued and that such person is entitled conformably to the treaty in this act mentioned to come within the United States.

Such certificate to be prima facie evidence.

Such certificate shall be prima facie evidence of the fact set forth therein, and shall be produced to the collector of customs, or his deputy, of the port in the district in the United States at which the person named therein shall arrive.

Penalties.

SEC. 7. That any person who shall knowingly and falsely alter or substitute any name for the name written in such certificate, or forge any such certificate, or knowingly utter any forged or fraudulent certificate, or falsely personate any person named in any such certificate, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in a sum not exceeding one thousand dollars, and imprisoned in a penitentiary for a term of not more than five years.

Master of vessel to deliver list of Chinese passengers to collector.

Amended by act of July 5, 1884.

SEC. 8. That the master of any vessel arriving in the United States from any foreign port or place shall, at the same time he delivers a manifest of the cargo, and if there be no cargo, then at the time of making a report of the entry of the vessel pursuant to law, in addition to the other matter required to be reported, and before landing, or permitting to land, any Chinese passengers, deliver and report to the collector of customs of the district in which such vessel shall have arrived a separate list of all Chinese passengers taken on board his vessel at any foreign port or place, and all such passengers on board the vessel at that time.

Such lists shall show the names of such passengers (and if accredited officers of the Chinese Government traveling

on the business of that Government, or their servants, with a note of such facts), and the names and other particulars, as shown by their respective certificates; and such list shall be sworn to by the master in the manner required by law in relation to the manifest of the cargo.

Any willful refusal or neglect of any such master to comply with the provisions of this section shall incur the same penalties and forfeiture as are provided for a refusal or neglect to report and deliver a manifest of the cargo.

Collector to examine and compare certificates and lists.

SEC. 9. That before any Chinese passengers are landed from any such vessel, the collector or his deputy shall proceed to examine such passengers, comparing the certificates with the list and with the passengers, and no passenger shall be allowed to land in the United States from such vessel in violation of law.

Forfeiture of vessel. Amended by act of July 5, 1884.

SEC. 10. That every vessel whose master shall knowingly violate any of the provisions of this act shall be deemed forfeited to the United States, and shall be liable to seizure and condemnation in any district of the United States into which such vessel may enter or in which she may be found.

Misdemeanor.—penalty. Amended by act of July 5, 1884.

SEC. 11. That any person who shall knowingly bring into or cause to be brought into the United States by land, or who shall knowingly aid or abet the same, or aid or abet the landing in the United States from any vessel of any Chinese person not lawfully entitled to enter the United States, shall be deemed guilty of a misdemeanor, and shall, on conviction thereof, be fined in a sum not exceeding one thousand dollars, and imprisoned for a term not exceeding one year.

Certificate sole evidence of right to enter. Amended by act of July 5, 1884.

SEC. 12. That no Chinese person shall be permitted to enter the United States by land without producing to the proper officer of customs the certificate in this act required of Chinese persons seeking to land from a vessel.

Deportation.

And any Chinese person found unlawfully within the United States shall be caused to be removed therefrom to the country from whence he came, by direction of the President of the United States, and at the cost of the United States, after being brought before some justice, judge, or commissioner of a court of the United States and found to be one not lawfully entitled to be or remain in the United States.

Diplomatic officers. Amended by act of July 5, 1884.

SEC. 13. That this act shall not apply to diplomatic and other officers of the Chinese Government traveling upon the business of that Government, whose credentials shall

be taken as equivalent to the certificate in this act mentioned, and shall exempt them and their body and household servants from the provisions of this act as to other Chinese persons.

State laws.

SEC. 14. That hereafter no State court or court of the United States shall admit Chinese to citizenship; and all laws in conflict with this act are hereby repealed.

Meaning of words "Chinese laborers." Amended by act of July 5, 1884.

SEC. 15. That the words "Chinese laborers," wherever used in this act, shall be construed to mean both skilled and unskilled laborers and Chinese employed in mining.

Approved, May 6, 1882.

ACT OF JULY 5, 1884.

(23 Stat., p. 115.)

AN ACT to amend an act entitled "An act to execute certain treaty stipulations relating to Chinese, approved May sixth, eighteen hundred and eighty-two."

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section one of the act entitled "An act to execute certain treaty stipulations relating to Chinese," approved May sixth, eighteen hundred and eighty-two, is hereby amended so as to read as follows:

Preamble.

"Whereas in the opinion of the Government of the United States the coming of Chinese laborers to this country endangers the good order of certain localities within the territory thereof; Therefore

Period of exclusion.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That from and after the passage of this act, and until the expiration of ten years next after the passage of this act, the coming of Chinese laborers to the United States be, and the same is hereby suspended, and during such suspension it shall not be lawful for any Chinese laborer to come from any foreign port or place, or having so come to remain within the United States."

Section two of said act is hereby amended so as to read as follows:

Liability of master of vessel.

"SEC. 2. That the master of any vessel who shall knowingly bring within the United States on such vessel, and land, or attempt to land, or permit to be landed any Chinese laborer, from any foreign port or place, shall be

deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not more than five hundred dollars for each and every such Chinese laborer so brought, and may also be imprisoned for a term not exceeding one year."

Section three of said act is hereby amended so as to read as follows:

Exceptions—resident laborers.

"SEC. 3. That the two foregoing sections shall not apply to Chinese laborers who were in the United States on the seventeenth day of November, eighteen hundred and eighty, or who shall have come into the same before the expiration of ninety days next after the passage of the act to which this act is amendatory, nor shall said sections apply to Chinese laborers, who shall produce to such master before going on board such vessel, and shall produce to the collector of the port in the United States at which such vessel shall arrive, the evidence hereinafter in this act required of his being one of the laborers in this section mentioned; nor shall the two foregoing sections apply to the case of any master whose vessel, being bound to a port not within the United States, shall come within the jurisdiction of the United States by reason of being in distress or in stress of weather, or touching at any port of the United States on its voyage to any foreign port or place: *Provided*, That all Chinese laborers brought on such vessels shall not be permitted to land except in case of absolute necessity, and must depart with the vessel on leaving port."

Vessel in distress.

Section four of said act is hereby amended so as to read as follows:

Repealed by act of Oct. 1, 1888.

SEC. 4. That for the purpose of properly identifying Chinese laborers who were in the United States on the seventeenth day of November, eighteen hundred and eighty, or who shall have come into the same before the expiration of ninety days next after the passage of the act to which this act is amendatory, and in order to furnish them with the proper evidence of their right to go from and come to the United States as provided by the said act and treaty between the United States and China dated November seventeenth, eighteen hundred and eighty, the collector of customs of the district from which any such Chinese laborers shall depart from the United States shall, in person or by deputy, go on board each vessel having on board any such Chinese laborer, and cleared or about to sail from his district for a foreign port, and on such vessel

make a list of all such Chinese laborers, which shall be entered in registry books, to be kept for that purpose in which shall be stated the individual, family, and tribal name in full, the age, occupation, when and where followed, last place of residence, physical marks or peculiarities, and all facts necessary for the identification of each such Chinese laborer, which books shall be safely kept in the custom-house; and every such Chinese laborer so departing from the United States shall be entitled to and shall receive, free of any charge or cost upon application therefor, from the collector or his deputy, in the name of said collector and attested by said collector's seal of office, at the time such list is taken, a certificate, signed by the collector or his deputy and attested by his seal of office, in such form as the Secretary of the Treasury shall prescribe, which certificate shall contain a statement of the individual, family, and tribal name in full, age, occupation, when and where followed, of the Chinese laborer to whom the certificate is issued, corresponding with the said list and registry in all particulars.

Collector to make list of departing laborers.

Certificate to be given laborer.

In case any Chinese laborer, after having received such certificate, shall leave such vessel before her departure, he shall deliver his certificate to the master of the vessel; and if such Chinese laborer shall fail to return to such vessel before her departure from port, the certificate shall be delivered by the master to the collector of customs for cancellation.

The certificate herein provided for shall entitle the Chinese laborer to whom the same is issued to return to and reenter the United States upon producing and delivering the same to the collector of customs of the district at which such Chinese laborer shall seek to reenter, and said certificate shall be the only evidence permissible to establish his right of reentry; and upon delivering of such certificate by such Chinese laborer to the collector of customs at the time of reentry in the United States, said collector shall cause the same to be filed in the custom-house and duly canceled.

Certificate to be sole evidence of right to enter.

Section six of said act is hereby amended so as to read as follows:

"SEC. 6. That in order to the faithful execution of the provisions of this act, every Chinese person, other than a laborer, who may be entitled by said treaty or this act to come within the United States, and who shall be about to come to the United States, shall obtain the permission of

Persons other than laborers.

Permission and identification by Chinese Government.

and be identified as so entitled by the Chinese Government, or of such other foreign government of which at the time such Chinese person shall be a subject, in each case to be evidenced by a certificate issued by such Government, which certificate shall be in the English language, and shall show such permission, with the name of the permitted person in his or her proper signature, and which certificate shall state the individual, family, and tribal name in full, title or official rank, if any, the age, height, and all physical peculiarities, former and present occupation or profession, when and where and how long pursued, and place of residence of the person to whom the certificate is issued, and that such person is entitled by this act to come within the United States.

Amended by Art. III of treaty of Dec. 8, 1894.

Certificate.

Merchants.

If the person so applying for a certificate shall be a merchant said certificate shall, in addition to above requirements, state the nature, character, and estimated value of the business carried on by him prior to and at the time of his application as aforesaid: *Provided*, That nothing in this act nor in said treaty shall be construed as embracing within the meaning of the word 'merchant,' hucksters, peddlers, or those engaged in taking, drying, or otherwise preserving shell or other fish for home consumption or exportation.

Travelers.

If the certificate be sought for the purpose of travel for curiosity, it shall also state whether the applicant intends to pass through or travel within the United States, together with his financial standing in the country from which such certificate is desired.

Consular visé.

The certificate provided for in this act, and the identity of the person named therein, shall, before such person goes on board any vessel to proceed to the United States, be viséed by the indorsement of the diplomatic representatives of the United States in the foreign country from which such certificate issues, or of the consular representative of the United States at the port or place from which the person named in the certificate is about to depart; and such diplomatic representative or consular representative whose indorsement is so required is hereby empowered, and it shall be his duty, before indorsing such certificate as aforesaid, to examine into the truth of the statements set forth in said certificate, and if he shall find upon examination that said or any of the statements contained therein are untrue it shall be his duty to refuse to indorse the same.

Such certificate viséed as aforesaid shall be prima facie evidence of the facts set forth therein, and shall be produced to the collector of customs of the port in the district in the United States at which the person named therein shall arrive, and afterward produced to the proper authorities of the United States whenever lawfully demanded, and shall be the sole evidence permissible on the part of the persons so producing the same to establish a right of entry into the United States; but said certificate may be controverted and the facts therein stated disproved by the United States authorities."

Certificate prima facie evidence against United States and sole evidence for holder.

Section eight of said act is hereby amended so as to read as follows:

"SEC. 8. That the master of any vessel arriving in the United States from any foreign port or place shall, at the same time he delivers a manifest of the cargo, and if there be no cargo, then at the time of making a report of the entry of the vessels pursuant to law, in addition to the other matter required to be reported, and before landing, or permitting to land, any Chinese passengers, deliver and report to the collector of customs of the district in which such vessels shall have arrived a separate list of all Chinese passengers taken on board his vessel at any foreign port or place, and all such passengers on board the vessel at that time. Such list shall show the names of such passengers (and if accredited officers of the Chinese or of any other foreign Government, traveling on the business of that Government, or their servants, with a note of such facts), and the names and other particulars as shown by their respective certificates; and such list shall be sworn to by the master in the manner required by law in relation to the manifest of the cargo.

Master of vessel to furnish sworn list of passengers.

"Any refusal or willful neglect of any such master to comply with the provisions of this section shall incur the same penalties and forfeiture as are provided for a refusal or neglect to report and deliver a manifest of the cargo."

Penalty.

Section ten of said act is hereby amended so as to read as follows:

"SEC. 10. That every vessel whose master shall knowingly violate any of the provisions of this act shall be deemed forfeited to the United States, and shall be liable to seizure and condemnation in any district of the United States into which such vessel may enter or in which she may be found."

Liability of vessel.

Section eleven of said act is hereby amended so as to read as follows:

Persons aiding or abetting unlawful entry.

"SEC. 11. That any person who shall knowingly bring into or cause to be brought into the United States by land, or who shall aid or abet the same, or aid or abet the landing in the United States from any vessel, of any Chinese person not lawfully entitled to enter the United States, shall be deemed guilty of a misdemeanor, and shall on conviction thereof, be fined a sum not exceeding one thousand dollars, and imprisoned for a term not exceeding one year."

Section twelve of said act is amended so as to read as follows:

Entry by land.

"SEC. 12. That no Chinese person shall be permitted to enter the United States by land without producing to the proper officer of customs the certificate in this act required of Chinese persons seeking to land from a vessel.

Deportation.

And any Chinese person found unlawfully within the United States shall be caused to be removed therefrom to

Amended by act of May 5, 1892.

the country from whence he came, and at the cost of the United States, after being brought before some justice, judge, or commissioner of a court of the United States and found to be one not lawfully entitled to be or to remain in the United States; and in all such cases the person who

Liability for expenses of removal.

brought or aided in bringing such person to the United States shall be liable to the Government of the United States for all necessary expenses incurred in such investigation and removal; and all peace officers of the several

Authority of State officers.

States and Territories of the United States are hereby invested with the same authority as a marshal or United States marshal in reference to carrying out the provisions of this act or the act of which this is amendatory, as a marshal or deputy marshal of the United States, and shall be entitled to like compensation to be audited and paid by the same officers.

Cost of maintenance and return of person having required certificate.

And the United States shall pay all costs and charges for the maintenance and return of any Chinese person having the certificate prescribed by law as entitling such Chinese person to come into the United States who may not have been permitted to land from any vessel by reason of any of the provisions of this act."

Section thirteen of said act is hereby amended so as to read as follows:

Diplomatic officers exempt.

"SEC. 13. That this act shall not apply to diplomatic and other officers of the Chinese or other Governments travel-

ing upon the business of that Government, whose credentials shall be taken as equivalent to the certificate in this act mentioned, and shall exempt them and their body and household servants from the provisions of this act as to other Chinese persons."

Section fifteen of said act is hereby amended so as to read as follows:

Act applicable to "Chinese" generally. —"laborers." Amended by act of Nov. 3, 1893.

"SEC. 15. That the provisions of this act shall apply to all subjects of China and Chinese, whether subjects of China or any other foreign power; and the words Chinese laborers, wherever used in this act shall be construed to mean both skilled and unskilled laborers and Chinese employed in mining."

Penalties.

SEC. 16. That any violation of any of the provisions of this act, or of the act of which this is amendatory, the punishment of which is not otherwise herein provided for, shall be deemed a misdemeanor, and shall be punishable by fine not exceeding one thousand dollars, or by imprisonment for not more than one year, or both such fine and imprisonment.

Not to affect proceedings under former act.

SEC. 17. That nothing contained in this act shall be construed to affect any prosecution or other proceeding, criminal or civil, begun under the act of which this is amendatory; but such prosecution or other proceeding, criminal or civil, shall proceed as if this act had not been passed.

Approved, July 5, 1884.

ACT OF SEPTEMBER 13, 1888.

(25 Stat., p. 476.)

AN ACT to prohibit the coming of Chinese laborers to the United States.

Immigration of Chinese laborers prohibited.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That from and after the date of the exchange of ratifications of the pending treaty between the United States of America and His Imperial Majesty the Emperor of China, signed on the twelfth day of March, anno Domini eighteen hundred and eighty-eight, it shall be unlawful for any Chinese per-

son, whether a subject of China or of any other power, to enter the United States, except as hereinafter provided.[a]

Privileged classes.

SEC. 2. That Chinese officials, teachers, students, merchants, or travelers for pleasure or curiosity, shall be permitted to enter the United States, but in order to entitle themselves to do so, they shall first obtain the permission

Certificate of Chinese Government

of the Chinese Government, or other Government of which they may at the time be citizens or subjects.

Certificate of United States consul.

Such permission, and also their personal identity shall in such case be evidenced by a certificate to be made out by the diplomatic representative of the United States in the country, or of the consular representative of the United States at the port or place from which the person named therein comes. The certificate shall contain a full description of such person, of his age, height, and general physical features, and shall state his former and present occu-

—to be in duplicate.

pation or profession and place of residence, and shall be made out in duplicate.

One copy shall be delivered open to the person named and described, and the other copy shall be sealed up and delivered by the diplomatic or consular officer as aforesaid to the captain of the vessel on which the person named in the certificate sets sails for the United States, together with the sealed certificate, which shall be addressed to the collector of customs at the port where such person is to land.

Letter to collector.

There shall be delivered to the aforesaid captain a letter from the consular officer addressed to the collector of customs aforesaid, and stating that said consular officer has on a certain day delivered to the said captain a certificate of the right of the person named therein to enter the United States as a Chinese official, or other exempted person, as the case may be.

Penalties.

And any captain who lands or attempts to land a Chinese person in the United States, without having in his possession a sealed certificate as required in this section, shall be liable to the penalties prescribed in section nine of this act.

To whom applicable. "Chinese" generally.

SEC. 3. That the provisions of this act shall apply to all persons of the Chinese race, whether subjects of China or other foreign power, excepting Chinese diplomatic or consular officers and their attendants; and the words "Chinese

[a] In an opinion dated July 7, 1899, the Solicitor of the Treasury decided that sections 5 to 14, inclusive, of the act of September 13, 1888, (with the exception of section 12), did not depend upon the ratification of the treaty of March 12, 1888, and therefore became operative immediately upon the passage of the act. S. 21357. See act of April 29, 1902.

laborers" whenever used in this act, shall be construed to mean both skilled and unskilled laborers and Chinese employed in mining. "Laborers." Amended by Act of Nov. 3, 1893.

SEC. 4. That the master of any vessel arriving in the United States from any foreign port or place with any Chinese passengers on board shall, when he delivers his manifest of cargo, and if there be no cargo, when he makes legal entry of his vessel, and before landing or permitting to land any Chinese person (unless a diplomatic or consular officer, or attendant of such officer) deliver to the collector of customs of the district in which the vessel shall have arrived, the sealed certificate and letters as aforesaid, and a separate list of all Chinese persons taken on board of this vessel at any foreign port or place, and of all such persons on board at the time of arrival as aforesaid. Such list shall show the names of such persons and other particulars as shown by their open certificates, or other evidences required by this act, and such list shall be sworn to by the master in the manner required by law in relation to the manifest of the cargo. Master to deliver certificate and letter to collector. —also separate sworn list of Chinese passengers.

The master of any vessel, as aforesaid, shall not permit any Chinese diplomatic or consular officer or attendant of such officer to land without having first been informed by the collector of customs of the official character of such officer or attendant. Diplomatic officers not to be landed without information from collector.

Any refusal or willful neglect of the master of any vessel to comply with the provisions of this section shall incur the same penalties and forfeitures as are provided for a refusal or neglect to report and deliver a manifest of the cargo. Penalties.

SEC. 5. That from and after the passage of this act, no Chinese laborer in the United States shall be permitted, after having left, to return thereto, except under the conditions stated in the following sections. Return of laborers prohibited.

SEC. 6. That no Chinese laborer within the purview of the preceding section shall be permitted to return to the United States, unless he has a lawful wife, child, or parent in the United States, or property therein of the value of one thousand dollars, or debts of like amount due him and pending settlement. Exceptions—wife, child, or parent resident here. Property or choses in action of value of $1,000 here.

The marriage to such wife must have taken place at least a year prior to the application of the laborer for a permit to return to the United States, and must have been followed by the continuous cohabitation of the parties as man and wife. Time of marriage.

Property and choses in action must be bona fide.

If the right to return be claimed on the ground of property or of debts, it must appear that the property is bona fide and not colorably acquired for the purpose of evading this act, or that the debts are unascertained and unsettled,

Promissory notes insufficient.

and not promissory notes or other similar acknowledgments of ascertained liability.

Identification of returning laborer.

SEC. 7. That a Chinese person claiming the right to be permitted to leave the United States and return thereto on any of the grounds stated in the foregoing section, shall apply to the collector of customs of the district from which he wishes to depart at least a month prior to the time of his departure, and shall make on oath before the said collector a full statement descriptive of his family, or property, or debts, as the case may be, and shall furnish to said collector such proof of the facts entitling him to return as shall be required by the rules and regulations prescribed from time to time by the Secretary of the Treasury, and for any false swearing in relation thereto he shall incur the penalties of perjury.

He shall also permit the collector to take a full description of his person, which description the collector shall retain and mark with a number.

And if the collector, after hearing the proofs and investigating all the circumstances of the case, shall decide to issue a certificate of return, he shall at such time and place as he may designate, sign and give to the person applying

Certificate.—to be sole evidence given of right to return.

a certificate containing the number of the description last aforesaid, which shall be the sole evidence given to such person of his right to return.

—not to be transferred.

If this last-named certificate be transferred, it shall become void, and the person to whom it was given shall forfeit his right to return to the United States.

Limitation.

The right to return under the said certificate shall be limited to one year; but it may be extended for an additional period, not to exceed a year, in cases where, by reason of sickness or other cause of disability beyond his control, the holder thereof shall be rendered unable sooner to return, which facts shall be fully reported to and investigated by the consular representative of the United States at the port or place from which such laborer departs for the United States, and certified by such representative of the United States to the satisfaction of the collector of customs at the port where such Chinese person shall seek to land in the United States, such certificate to be deliv-

—extension in case of sickness or disability.

Certificate of sickness or disability.

ered by said representative to the master of the vessel on which he departs for the United States.

Return certificate indispensable.

And no Chinese laborer shall be permitted to re-enter the United States without producing to the proper officer of the customs at the port of such entry the return certificate herein required. A Chinese laborer possessing a certificate under this section shall be admitted to the United States only at the port from which he departed therefrom, and no Chinese person, except Chinese diplomatic or consular officers and their attendants, shall be permitted to enter the United States except at the ports of San Francisco, Portland, Oregon, Boston, New York, New Orleans, Port Townsend, or such other ports as may be designated by the Secretary of the Treasury.

Laborer to be admitted only at port from which he departed.

Chinese may enter only at certain ports.

Secretary of the Treasury to prescribe regulations.

SEC. 8. That the Secretary of the Treasury shall be, and he hereby is, authorized and empowered to make and prescribe, and from time to time to change and amend such rules and regulations, not in conflict with this act, as he may deem necessary and proper to conveniently secure to such Chinese persons as are provided for in articles second and third of the said treaty between the United States and the Empire of China, the rights therein mentioned, and such as shall also protect the United States against the coming and transit of persons not entitled to the benefit of the provisions of said articles.

—and form of certificates.

And he is hereby further authorized and empowered to prescribe the form and substance of certificates to be issued to Chinese laborers under and in pursuance of the provisions of said articles, and prescribe the form of the record of such certificate and of the proceedings for issuing the same, and he may require the deposit, as a part of such record, of the photograph of the party to whom any such certificate shall be issued.

Deposit of photographs.

Violation of act by master of vessel.

SEC. 9. That the master of any vessel who shall knowingly bring within the United States on such vessel, and land, or attempt to land, or permit to be landed, any Chinese laborer or other Chinese person, in contravention of the provisions of this act, shall be deemed guilty of a misdemeanor and, on conviction thereof, shall be punished with a fine of not less than five hundred dollars, nor more than one thousand dollars, in the discretion of the court, for every Chinese laborer or other Chinese person so brought, and may also be imprisoned for a term of not less than one year, nor more than five years, in the discretion of the court.

Penalty.

Vessel in distress or touching at port.

SEC. 10. That the foregoing section shall not apply to the case of any master whose vessel shall come within the jurisdiction of the United States in distress or under stress of weather, or touching at any port of the United States on its voyage to any foreign port or place. But Chinese laborers or persons on such vessel shall not be permitted to land, except in case of necessity, and must depart with the vessel on leaving port.

Forgery of certificate.

SEC. 11. That any person who shall knowingly and falsely alter or substitute any name for the name written in any certificate herein required, or forge such certificate, or knowingly utter any forged or fraudulent certificate, or falsely personate any person named in any such certificate, and any person other than the one to whom a certificate was issued who shall falsely present any such certificate, shall be deemed guilty of a misdemeanor, and upon conviction

Penalty.

thereof shall be fined in a sum not exceeding one thousand dollars and imprisoned in a penitentiary for a term of not more than five years.

Examination of passengers and comparison with list.

SEC. 12. That before any Chinese passengers are landed from any such vessel the collector, or his deputy, shall proceed to examine such passengers, comparing the certificates with the list and with the passengers; and no passenger shall be allowed to land in the United States from such vessel in violation of law; and the collector shall in person decide all questions in dispute with regard to the right of

Decision of collector subject to review by Secretary of the Treasury.

any Chinese passenger to enter the United States, and his decision shall be subject to review by the Secretary of the Treasury and not otherwise.

Arrest of Chinese unlawfully in United States.

SEC. 13. That any Chinese person or person of Chinese descent found unlawfully in the United States or its Territories may be arrested upon a warrant issued upon a complaint, under oath, filed by any party on behalf of the United States, by any justice, judge, or commissioner of any United States court, returnable before any justice, judge, or commissioner of a United States court, or before any United States court, and when convicted upon a hearing and found and adjudged to be one not lawfully entitled to be or remain in the United States, such person shall be

Deportation.

removed from the United States to the country whence he came.

Appeal to judge of district court.

But any such Chinese person convicted before a commissioner of a United States court may, within ten days from such conviction, appeal to the judge of the district court for the district.

A certified copy of the judgment shall be the process upon which said removal shall be made, and it may be executed by the marshal of the district or any officer having authority of a marshal under the provisions of this section.

Punishment of person aiding.

And in all such cases the person who brought or aided in bringing such person into the United States shall be liable to the Government of the United States for all necessary expenses incurred in such investigation and removal; and all peace officers of the several States and Territories of the United States are hereby invested with the same authority in reference to carrying out the provisions of this act, as a marshal or deputy marshal of the United States, and shall be entitled to like compensation, to be audited and paid by the same officers.

—liability for expenses of deportation.

Authority of State officers.

Diplomatic and consular officers.

SEC. 14. That the preceding sections shall not apply to Chinese diplomatic or consular officers or their attendants, who shall be admitted to the United States under special instructions of the Treasury Department, without production of other evidence than that of personal identity.

Repeal of prior acts.

[SEC. 15. That the act entitled "An act to execute certain treaty stipulations relating to Chinese," approved May sixth, eighteen hundred and eighty-two, and an act to amend said act, approved July fifth, eighteen hundred and eighty-four, are hereby repealed, to take effect upon the ratification of the pending treaty as provided in section one of this act.]

Approved, September 13, 1888.

ACT OF OCTOBER 1, 1888.

(25 Stat., p. 504.)

AN ACT a supplement to an act entitled "An act to execute certain treaty stipulations relating to Chinese," approved the sixth day of May, eighteen hundred and eighty-two.

Return of laborers prohibited.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That from and after the passage of this act, it shall be unlawful for any Chinese laborer who shall at any time heretofore have been, or who may now or hereafter be, a resident within the United States, and who shall have departed, or shall depart, therefrom, and shall not have returned before the passage of this act, to return to, or remain in, the United States.

Certificates of identity forbidden—existing certificates vacated.

SEC. 2. That no certificates of identity provided for in the fourth and fifth sections of the act to which this is a supplement shall hereafter be issued; and every certificate heretofore issued in pursuance thereof, is hereby declared void and of no effect, and the Chinese laborer claiming admission by virtue thereof shall not be permitted to enter the United States.

Extension of provisions of former act.

SEC. 3. That all the duties prescribed, liabilities, penalties, and forfeitures imposed, and the powers conferred by the second, tenth, eleventh, and twelfth sections of the act to which this is a supplement are hereby extended and made applicable to the provisions of this act.

Repeal.

SEC. 4. That all such part or parts of the act to which this is a supplement as are inconsistent herewith are hereby repealed.

Approved, October 1, 1888. Repealed by convention of 1894. See 21, Op. A. G., 68.

ACT OF MAY 5, 1892.

(27 Stat., p. 25.)

AN ACT to prohibit the coming of Chinese persons into the United States.

Extension of period of exclusion.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all laws now in force prohibiting and regulating the coming into this country of Chinese persons and persons of Chinese descent are hereby continued in force for a period of ten years from the passage of this act.

Deportation to China.

SEC. 2. That any Chinese person or person of Chinese descent, when convicted and adjudged under any of said laws to be not lawfully entitled to be or remain in the United States, shall be removed from the United States to China, unless he or they shall make it appear to the justice, judge, or commissioner before whom he or they are tried that he or they are subjects or citizens of some other country, in which case he or they shall be removed from the United States to such country: *Provided*, That in any case where such other country of which such Chinese person shall claim to be a citizen or subject shall demand any tax as a condition of the removal of such person to that country, he or she shall be removed to China.

Deportation to country other than China.

—*proviso* in case of foreign tax.

Burden of proof on Chinese.

SEC. 3. That any Chinese person or person of Chinese descent arrested under the provisions of this act or the acts hereby extended shall be adjudged to be unlawfully within the United States unless such person shall establish, by affirmative proof, to the satisfaction of such justice, judge, or commissioner, his lawful right to remain in the United States.

Imprisonment. Void. See Wong Wing v. U. S., 163 U. S., 228.

SEC. 4. That any such Chinese person or person of Chinese descent convicted and adjudged to be not lawfully entitled to be or remain in the United States shall be imprisoned at hard labor for a period of not exceeding one year and thereafter removed from the United States, as hereinbefore provided.

Writ of habeas corpus.

SEC. 5. That after the passage of this act, on an application to any judge or court of the United States in the first instance for a writ of habeas corpus, by a Chinese person seeking to land in the United States, to whom that privilege has been denied, no bail shall be allowed and such application shall be heard and determined promptly without unnecessary delay.

Bail not allowed.

Registration of resident laborers. Amended by act of Nov. 3, 1893.

SEC. 6. And it shall be the duty of all Chinese laborers within the limits of the United States at the time of the passage of this act, and who are entitled to remain in the United States, to apply to the collector of internal revenue of their respective districts, within one year after the passage of this act, for a certificate of residence, and any Chinese laborer within the limits of the United States who shall neglect, fail, or refuse to comply with the provisions of this act, or who, after one year from the passage hereof, shall be found within the jurisdiction of the United States without such certificate of residence, shall be deemed and adjudged to be unlawfully within the United States, and may be arrested by any United States customs official, collector of internal revenue or his deputies, United States marshal or his deputies, and taken before a United States judge, whose duty it shall be to order that he be deported from the United States, as hereinbefore provided, unless he shall establish clearly to the satisfaction of said judge that by reason of accident, sickness or other unavoidable cause, he has been unable to procure his certificate, and to the satisfaction of the court, and by at least one credible white witness, that he was a resident of the United States at the time of the passage of this act; and if upon the hearing it shall appear that he is so entitled to a certificate, it shall be granted upon his paying the cost.

Deportation.

Excuses.

Loss of certificate.

Should it appear that said Chinaman had procured a certificate which has been lost or destroyed, he shall be detained and judgment suspended a reasonable time to enable him to procure a duplicate from the officer granting it, and in such cases the cost of said arrest and trial shall be in the discretion of the court.

Persons not laborers.

And any Chinese person, other than a Chinese laborer, having a right to be and remain in the United States, desiring such certificate as evidence of such right, may apply for and receive the same without charge.

Secretary of Treasury to prescribe rules and forms.

SEC. 7. That immediately after the passage of this act the Secretary of the Treasury shall make such rules and regulations as may be necessary for the efficient execution of this act, and shall prescribe the necessary forms and furnish the necessary blanks to enable collectors of internal revenue to issue the certificates required hereby, and make such provisions that certificates may be procured in localities convenient to the applicants.

Contents of certificate.

Such certificates shall be issued without charge to the applicant, and shall contain the name, age, local residence, and occupation of the applicant, and such other description of the applicant as shall be prescribed by the Secretary of the Treasury, and a duplicate thereof shall be filed in the office of the collector of internal revenue for the district within which such Chinaman makes application.

Forgery.

SEC. 8. That any person who shall knowingly and falsely alter or substitute any name for the name written in such certificate or forge such certificate, or knowingly utter any forged or fraudulent certificate, or falsely personate any person named in such certificate, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined in a sum not exceeding one thousand dollars or imprisoned in the penitentiary for a term of not more than five years.

Fees for services.

SEC. 9. The Secretary of the Treasury may authorize the payment of such compensation in the nature of fees to the collectors of internal revenue, for services performed under the provisions of this act, in addition to salaries now allowed by law, as he shall deem necessary, not exceeding the sum of one dollar for each certificate issued.

Approved, May 5, 1892.

NOTE.—The act of March 3, 1893, for the enforcement of the immigration and contract labor laws, does not apply to Chinese persons. Sec. 10, 27 Stat., 569.

ACT OF NOVEMBER 3, 1893.

(28 Stat., p. 7.)

AN ACT to amend an act, entitled "An act to prohibit the coming of Chinese persons into the United States," approved May fifth, eighteen hundred and ninety-two.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section six of an act entitled "An act to prohibit the coming of Chinese persons into the United States," approved May fifth, eighteen hundred and ninety-two, is hereby amended so as to read as follows:

"SEC. 6. And it shall be the duty of all Chinese laborers within the limits of the United States who are entitled to remain in the United States before the passage of the act to which this is an amendment to apply to the collector of internal revenue of their respective districts within six months after the passage of this act for a certificate of residence; and any Chinese laborer within the limits of the United States who shall neglect, fail, or refuse to comply with the provisions of this act and the act to which this is an amendment, or who, after the expiration of said six months, shall be found within the jurisdiction of the United States without such certificate of residence, shall be deemed and adjudged to be unlawfully within the United States, and may be arrested by any United States customs official, collector of internal revenue or his deputies, United States marshal or his deputies, and taken before a United States judge, whose duty it shall be to order that he be deported from the United States, as provided in this act and in the act to which this is an amendment, unless he shall establish clearly to the satisfaction of said judge that by reason of accident, sickness, or other unavoidable cause he has been unable to procure his certificate, and to the satisfaction of said United States judge, and by at least one credible witness other than Chinese, that he was a resident of the United States on the fifth of May, eighteen hundred and ninety-two; and if, upon the hearing, it shall appear that he is so entitled to a certificate, it shall be granted upon his paying the cost.

Resident laborers must register.

Arrest.

Deportation.

Excuses.

"Should it appear that said Chinaman had procured a certificate which has been lost or destroyed, he shall be detained and judgment suspended a reasonable time to enable him to procure a duplicate from the officer granting it, and in such cases the cost of said arrest and trial shall

Loss of certificates.

Persons other than laborers.

be in the discretion of the court; and any Chinese person, other than a Chinese laborer, having a right to be and remain in the United States, desiring such certificate as evidence of such right, may apply for and receive the same without charge; and that no proceedings for a violation of the provisions of said section six of said act of May fifth, eighteen hundred and ninety-two, as originally enacted, shall hereafter be instituted, and that all proceedings for said violation now pending are hereby discontinued:"

Proceedings under former act discontinued.

Felons can not register.

Provided, That no Chinese person heretofore convicted in any court of the States or Territories or of the United States of a felony shall be permitted to register under the provisions of this act; but all such persons who are now subject to deportation for failure or refusal to comply with the act to which this is an amendment shall be deported from the United States as in said act and in this act provided, upon any appropriate proceedings now pending or which may be hereafter instituted.

Deportation.

"Laborer" defined.

SEC. 2. The words "laborer" or "laborers," wherever used in this act, or in the act to which this is an amendment, shall be construed to mean both skilled and unskilled manual laborers, including Chinese employed in mining, fishing, huckstering, peddling, laundrymen, or those engaged in taking, drying, or otherwise preserving shell or other fish for home consumption or exportation.

"Merchant" defined.

The term "merchant," as employed herein and in the acts of which this is amendatory, shall have the following meaning and none other: A merchant is a person engaged in buying and selling merchandise, at a fixed place of business, which business is conducted in his name, and who during the time he claims to be engaged as a merchant, does not engage in the performance of any manual labor, except such as is necessary in the conduct of his business as such merchant.

Evidence to establish former status of merchant.

Where an application is made by a Chinaman for entrance into the United States on the ground that he was formerly engaged in this country as a merchant, he shall establish by the testimony of two credible witnesses other than Chinese the fact that he conducted such business as hereinbefore defined for at least one year before his departure from the United States, and that during such year he was not engaged in the performance of any manual labor, except such as was necessary in the conduct of his business as such merchant, and in default of such proof shall be refused landing.

Such order of deportation shall be executed by the United States marshal of the district within which such order is made, and he shall execute the same with all convenient dispatch; and pending the execution of such order such Chinese person shall remain in the custody of the United States marshal, and shall not be admitted to bail. Execution of order of deportation. Bail not allowed.

The certificate herein provided for shall contain the photograph of the applicant, together with his name, local residence, and occupation, and a copy of such certificate, with a duplicate of such photograph attached, shall be filed in the office of the United States collector of internal revenue of the district in which such Chinaman makes application. Photograph of resident.

Such photograph in duplicate shall be furnished by each applicant in such form as may be prescribed by the Secretary of the Treasury.

Approved, November 3, 1893.

(NOTE.—By act of December 7th, 1893, collectors are not entitled to fees for registering Chinese. 28 Stat., p. 575.)

ACT OF AUGUST 18, 1894.

(28 Stat., p. 390.)

AN ACT making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and ninety-five, and for other purposes.

Be it enacted, etc.,

* * * * * * *

In every case where an alien is excluded from admission into the United States under any law or treaty now existing or hereafter made, the decision of the appropriate immigration or customs officers, if adverse to the admission of such alien, shall be final, unless reversed on appeal to the Secretary of the Treasury. Finality of decision.

* * * * * * *

Approved, August 18, 1894.

JOINT RESOLUTION OF JULY 7, 1898.

(U. S. Stat., 1897–98, p. 751.)

* * * There shall be no further immigration of Chinese into the Hawaiian Islands, except upon such condi-

tions as are now or may hereafter be allowed by the laws of the United States; and no Chinese, by reason of anything herein contained, shall be allowed to enter the United States from the Hawaiian Islands.

ACT OF JUNE 6, 1900.

AN ACT making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, nineteen hundred and one, and for other purposes.

Be it enacted, etc.,

* * * * * * * * *

Commissioner-General of Immigration shall administer Chinese exclusion laws.

* * * and hereafter the Commissioner-General of Immigration, in addition to his other duties, shall have charge of the administration of the Chinese exclusion law and of the various acts regulating immigration into the United States, its Territories, and the District of Columbia, under the supervision and direction of the Secretary of the Treasury.

Approved, June 6, 1900 (31 Stat., p. 611).

ACT OF MARCH 3, 1901.

AN ACT Supplementary to an act entitled "An act to prohibit the coming of Chinese persons into the United States," approved May, 1892, and fixing the compensation of commissioners in such cases.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That it shall be lawful for the district attorney of the district in which any Chinese person may be arrested for being found unlawfully within the United States, or having unlawfully entered the United States, to designate the United States commissioner within such district before whom such Chinese person shall be taken for a hearing.

SEC. 2. That a United States commissioner shall be entitled to receive a fee of five dollars for hearing and deciding a case arising under the Chinese-exclusion laws.

SEC. 3. That no warrant of arrest for violations of the Chinese-exclusion laws shall be issued by United States commissioners excepting upon the sworn complaint of a United States district attorney, assistant United States district attorney, collector, deputy collector, or inspector of customs, immigration inspector, United States marshal,

or deputy United States marshal, or Chinese inspector, unless the issuing of such warrant of arrest shall first be approved or requested in writing by the United States district attorney of the district in which issued.

SEC. 4. That this act shall take effect immediately.

Approved, March 3, 1901 (31 Stat., p. 1093).

* * * * * * *

SEC. 101. That Chinese in the Hawaiian Islands when this act takes effect may within one year thereafter obtain certificates of residence as required by "An Act to prohibit the coming of Chinese persons into the United States," approved May fifth, eighteen hundred and ninety-two, as amended by an Act approved November third, eighteen hundred and ninety-three, entitled "An Act to amend an Act entitled 'An Act to prohibit the coming of Chinese persons into the United States,' approved May fifth, eighteen hundred and ninety-two," and until the expiration of said year shall not be deemed to be unlawfully in the United States if found therein without such certificates: *Provided, however*, That no Chinese laborer, whether he shall hold such certificate or not, shall be allowed to enter any State, Territory, or District of the United States from the Hawaiian Islands.

* * * * * * *

Act approved April 30, 1900 (36 Stat., p. 161).

ACT OF APRIL 29, 1902.

AN ACT To prohibit the coming into and to regulate the residence within the United States, its Territories, and all territory under its jurisdiction, and the District of Columbia, of Chinese and persons of Chinese descent.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all laws now in force prohibiting and regulating the coming of Chinese persons, and persons of Chinese descent, into the United States, and the residence of such persons therein, including sections five, six, seven, eight, nine, ten, eleven, thirteen, and fourteen of the Act entitled "An Act to prohibit the coming of Chinese laborers into the United States," approved September thirteenth, eighteen hundred and eighty-eight, be, and the same are hereby, re-enacted, extended, and continued so far as the

same are not inconsistent with treaty obligations, until otherwise provided by law, and said laws shall also apply to the island territory under the jurisdiction of the United States, and prohibit the immigration of Chinese laborers, not citizens of the United States, from such island territory to the mainland territory of the United States, whether in such island territory at the time of cession or not, and from one portion of the island territory of the United States to another portion of said island territory: *Provided, however*, That said laws shall not apply to the transit of Chinese laborers from one island to another island of the same group; and any islands within the jurisdiction of any State or the District of Alaska shall be considered a part of the mainland under this section.

SEC. 2. That the Secretary of the Treasury is hereby authorized and empowered to make and prescribe, and from time to time change, such rules and regulations not inconsistent with the laws of the land as he may deem necessary and proper to execute the provisions of this Act and of the Acts hereby extended and continued and of the treaty of December eighth, eighteen hundred and ninety-four, between the United States and China, and with the approval of the President to appoint such agents as he may deem necessary for the efficient execution of said treaty and said Acts.

SEC. 3. That nothing in the provisions of this Act or any other Act shall be construed to prevent, hinder, or restrict any foreign exhibitor, representative, or citizen of any foreign nation, or the holder, who is a citizen of any foreign nation, of any concession or privilege from any fair or exposition authorized by Act of Congress from bringing into the United States, under contract, such mechanics, artisans, agents, or other employees, natives of their respective foreign countries, as they or any of them may deem necessary for the purpose of making preparation for installing or conducting their exhibits or of preparing for installing or conducting any business authorized or permitted under or by virtue of or pertaining to any concession or privilege which may have been or may be granted by any said fair or exposition in connection with such exposition, under such rules and regulations as the Secretary of the Treasury may prescribe, both as to the admission and return of such person or persons.

SEC. 4. That it shall be the duty of every Chinese laborer, other than a citizen, rightfully in, and entitled to remain

in any of the insular territory of the United States (Hawaii excepted) at the time of the passage of this Act, to obtain within one year thereafter a certificate of residence in the insular territory wherein he resides, which certificate shall entitle him to residence therein, and upon failure to obtain such certificate as herein provided he shall be deported from such insular territory; and the Philippine Commission is authorized and required to make all regulations and provisions necessary for the enforcement of this section in the Philippine Islands, including the form and substance of the certificate of residence so that the same shall clearly and sufficiently identify the holder thereof and enable officials to prevent fraud in the transfer of the same: *Provided, however*, That if said Philippine Commission shall find that it is impossible to complete the registration herein provided for within one year from the passage of this Act, said Commission is hereby authorized and empowered to extend the time for such registration for a further period not exceeding one year.

Approved, April 29, 1902 (32 Stat., part 1, p. 176).

AN ACT to establish the Department of Commerce and Labor.

(32 Stat., p. 825.)

* * * * * * *

SEC. 2. That there shall be in said Department an Assistant Secretary of Commerce and Labor, to be appointed by the President, who shall receive a salary of five thousand dollars a year. He shall perform such duties as shall be prescribed by the Secretary or required by law. There shall also be one chief clerk and a disbursing clerk and such other clerical assistants as may from time to time be authorized by Congress; and the Auditor for the State and other Departments shall receive and examine all accounts of salaries and incidental expenses of the office of the Secretary of Commerce and Labor, and of all bureaus and offices under his direction, all accounts relating to the Light-House Board, Steamboat-Inspection Service, Immigration, Navigation, Alaskan fur-seal fisheries, the National Bureau of Standards, Coast and Geodetic Survey, Census, Department of Labor, Fish Commission and to all other business within the jurisdiction of the Department of Commerce and Labor, and certify the balances arising thereon to the Divison of Bookkeeping and Warrants and send forthwith a copy of each certificate to the Secretary of Commerce and Labor.

* * * * * * *

SEC. 4. That the following-named offices, bureaus, divisions, and branches of the public service, now and heretofore under the jurisdiction of the Department of the Treasury, and all that pertains to the same, known as the Light-House Board, the Light-House Establishment, the Steamboat-Inspection Service, the Bureau of Navigation, the United States Shipping Commissioners, the National Bureau of Standards, the Coast and Geodetic Survey, the Commissioner-General of Immigration, the commissioners of immigration, the Bureau of Immigration, the immigration service at large, and the Bureau of Statistics, be, and the same hereby are, transferred from the Department of the Treasury to the Department of Commerce and Labor, and the same shall hereafter remain under the jurisdiction and supervision of the last-named Department; * * *.

* * * * * * *

SEC. 7. That the jurisdiction, supervision and control now possessed and exercised by the Department of the Treasury over the fur-seal, salmon, and other fisheries of Alaska and over the immigration of aliens into the United States, its waters, territories and any place subject to the jurisdiction thereof, are hereby transferred and vested in the Department of Commerce and Labor: *Provided*, That nothing contained in this Act shall be construed to alter the method of collecting and accounting for the head-tax prescribed by section one of the Act entitled "An Act to regulate immigration," approved August third, eighteen hundred and eighty-two. That the authority, power and jurisdiction now possessed and exercised by the Secretary of the Treasury by virtue of any law in relation to the exclusion from and the residence within the United States, its territories and the District of Columbia, of Chinese and persons of Chinese descent, are hereby transferred to and conferred upon the Secretary of Commerce and Labor, and the authority, power and jurisdiction in relation thereto now vested by law or treaty in the collectors of customs and the collectors of internal revenue, are hereby conferred upon and vested in such officers under the control of the Commissioner-General of Immigration, as the Secretary of Commerce and Labor may designate therefor.

* * * * * * *

SEC. 13. That this Act shall take effect and be in force from and after its passage: *Provided, however*, That the

provisions of this Act other than those of section twelve in relation to the transfer of any existing office, bureau, division, officer or other branch of the public service or authority now conferred thereon, to the Department of Commerce and Labor shall take effect and be in force on the first day of July, nineteen hundred and three, and not before.

Approved, February 14, 1903.

AN ACT granting additional quarantine powers and imposing additional duties upon the Marine-Hospital Service.

* * * * * * *

SEC. 7. That whenever it shall be shown to the satisfaction of the President that by reason of the existence of cholera, or other infectious or contagious diseases, in a foreign country there is serious danger of the introduction of the same into the United States, and that notwithstanding the quarantine defense this danger is so increased by the introduction of persons or property from such country that a suspension of the right to introduce the same is demanded, in the interest of the public health, the President shall have power to prohibit, in whole or in part, the introduction of persons and property from such countries or places as he shall designate and for such period of time as he may deem necessary.

* * * * * * *

Act approved February 15, 1893 (27 Stat., p. 449).

CHINESE REGULATIONS.

(Approved July 27, 1903.)

RULE 1. Under the provisions of the laws and treaties in relation to the exclusion of Chinese persons, only such persons as are registered Chinese laborers, officials of the Chinese Government, teachers, students, travelers for curiosity or pleasure, merchants and their lawful wives and minor children, laborers seeking in good faith to pass through the country to foreign territory, seamen as provided in Rules 15 and 16, and persons whose physical condition necessitates immediate hospital treatment shall be permitted to land at any port of the United States.

RULE 2. Only those Chinese persons who are expressly declared by the laws and treaty relating to the exclusion of Chinese to be admissible shall be allowed to enter the United States, and those only upon compliance with the requirements of said laws and treaty and of regulations issued thereunder. (See Op. Atty. Genl., Vol. XXII, p. 132.) If the Chinese person has been born in the United States, neither the immigration acts nor the Chinese exclusion acts prohibiting persons of the Chinese race, and especially Chinese laborers, from coming into the United States apply to such person. (169 U. S. Sup. Court, 653.)

RULE 3. Chinese aliens shall be examined as to their right to admission to the United States under the provisions of the laws regulating immigration as well as under the laws in relation to the exclusion of Chinese persons. (See Op. Atty. Genl., June 24, 1903.)

RULE 4. No Chinese person, other than a Chinese diplomatic or consular officer and attendants, shall be permitted to enter the United States except at the ports of San Francisco; Portland, Oreg.; Boston; New York; New Orleans; Port Townsend; Richford, Vt.; Malone, N. Y.; Portal, N. Dak.; Sumas, Wash.; Honolulu, Hawaii; San Juan and Ponce, P. R.; San Diego, Cal., and Tampa, Fla. (See Rule 5.)

RULE 5. Under an opinion of the Attorney-General (Vol. XXI, p. 357) the Chinese consul at the port of departure from the United States is required to certify to the sickness or other cause of disability which a Chinese laborer alleges in excuse for his failure to return within one year. To secure the benefit of the conditional extension of the time of absence beyond one year the Chinese laborer making such claim must have departed from a port within the jurisdiction of a Chinese consular officer.

RULE 6. Immediately upon the arrival of Chinese persons at any port mentioned in Rule 4 it shall be the duty of the officer in charge of

the administration of the Chinese exclusion laws to adopt suitable means to prevent communication with them by any persons other than officials under his control, to have said Chinese persons examined promptly, as by law provided, touching their right to admission and to permit those proving such right to land.

RULE 7. The examination prescribed in Rule 6 should be separate and apart from the public, in the presence of Government officials and such witness or witnesses only as the examining officer shall designate, and, if, upon the conclusion thereof, the Chinese applicant for admission is adjudged to be inadmissible, he should be advised of his right of appeal and his counsel should be permitted, after duly filing notice of appeal, to examine, but not make copies of, the evidence upon which the excluding decision is based.

RULE 8. Every Chinese person refused admission under the provisions of the exclusion laws by the decision of the officer in charge at the port of entry must, if he shall elect to take an appeal to the Secretary, give written notice thereof to said officer within two days after such decision is rendered.

RULE 9. Notice of appeal provided for in Rule 8 shall act as a stay upon the disposal of the Chinese person whose case is thereby affected until a final decision is rendered by the Secretary; and, within three days after the filing of such notice, unless further delay is required to investigate and report upon new evidence, the complete record of the case, together with such briefs, affidavits, and statements as are to be considered in connection therewith, shall be forwarded to the Commissioner-General of Immigration by the officer in charge at the port of arrival, accompanied by his views thereon in writing; but on such appeal no evidence will be considered that has not been made the subject of investigation and report by the said officer in charge.

RULE 10. Additional time for the preparation of cases after the expiration of three days next succeeding the filing of notice of appeal will be allowed only in those instances in which, in the judgment of said officer in charge, a literal compliance with Rule 9 would occasion injustice to the appellant or the risk of defeat of the purposes of the law, and the reasons for delay beyond the time prescribed shall in every instance be stated in writing in the papers forwarded to the Commissioner-General of Immigration.

RULE 11. Every officer in charge of the enforcement of the Chinese exclusion laws at a port of entry shall cause to be kept in books, to be furnished by the Bureau of Immigration, complete records of every Chinese person arriving thereat, synopses of which shall be forwarded upon appropriate blanks, not later than the tenth day of each calendar month for the next preceding month, to the Commissioner-General of Immigration, as also weekly reports upon forms to be furnished by the Bureau of Immigration.

RULE 12. Every Chinese person permitted to land from a vessel for examination at some designated place shall be still considered as on shipboard until finally and lawfully landed, so far as relates to his admission to the United States and so far as relates to the responsibility of the master, agent, or owner of such vessel for his safe guarding, maintenance, and hospital expenses.

RULE 13. The master, agent, or owner of any vessel or other means of transportation by which Chinese persons are brought to any port of entry named in Rule 4 shall, at least twenty-four hours in advance thereof, notify the chief officer in charge of the administration of the Chinese exclusion laws at said port of the intended time of sailing of said vessel or departure of other vehicle therefrom, in order that the said officer may cause to be placed on board thereof every Chinese person whose application for permission to land has been finally denied.

RULE 14. Every Chinese person seeking permission to land for the purpose of passing through the United States to a foreign destination must comply with the provisions of Department Circular No. 163 of December 8, 1900, and if found, in the judgment of the chief officer in charge at the port of arrival, to be seeking the privilege of transit with an ulterior purpose of gaining an unlawful access to the United States, shall be refused permission to land.

RULE 15. No Chinese person, other than a seaman, will be permitted to land temporarily under bond, except upon the certificate of a surgeon of the Public Health and Marine-Hospital Service that such temporary landing is necessitated by the condition of his health, and with the permission of the Secretary of Commerce and Labor, under such conditions as he shall prescribe.

RULE 16. To prevent violations of law by Chinese seamen discharged or granted shore leave at ports of the United States, bond with approved security in the penalty of $500 for each such seaman shall be exacted for his departure from and out of the United States within thirty days.

RULE 17. Every Chinese person refused admission to the United States, being actually or constructively on the vessel or other conveyance by which he was brought to a port of entry, must necessarily be returned to the country whence he came, at the expense of the transportation agency owning such vessel or conveyance, since such vessel or conveyance returns to the port or place at which such Chinese person embarked for the United States.

RULE 18. Orders for the deportation of Chinese persons can only be given by a justice, judge, or commissioner of a United States court upon his decision that such Chinese persons have been found to be unlawfully within the United States, and the cost of making any such deportation is payable from the appropriation for the enforcement of the Chinese-exclusion laws.

RULE 19. Hereafter an original certificate or residence can be issued to a Chinese laborer only upon the finding of a justice, judge, or commissioner of a United States court that such Chinese laborer was a resident of the United States during the period of registration and that by reason of accident, sickness, or other unavoidable cause, he was then unable to secure such a certificate, except under section 4 of the act approved April 29, 1902.

RULE 20. Duplicate certificates of residence shall be issued only upon satisfactory proof to the Commissioner-General of Immigration that the Chinese person upon whose behalf application therefor is made has actually, by unavoidable accident, lost his original certificate.

RULE 21. The burden of proof in all cases rests upon Chinese persons claiming the right of admission to, or residence within, the United States, to establish such right affirmatively and satisfactorily to the appropriate Government officers, and in no case in which the law prescribes the nature of the evidence to establish such right shall other evidence be accepted in lieu thereof, and in every doubtful case the benefit of the doubt shall be given by administrative officers to the United States Government.

RULE 22. No authenticated copy of a judicial finding that a Chinese person was born in the United States shall be accepted as conclusive in favor of the person presenting it, unless he be completely identified as the person to whom such authenticated copy purports to relate.

RULE 23. All certificates, or other evidence, offered by Chinese persons to establish their right of admission to the United States, other than laborers' registration certificates, shall be retained by the officers in charge of the administration of the Chinese exclusion laws at ports of entry; the immunity from arrest of the Chinese persons admitted thereon resting upon their exclusive occupation in the pursuits for which their certificates, or other evidence, claim that they respectively seek admission to the United States.

RULE 24. Every Chinese laborer found within the United States without the certificate of registration prescribed by law shall be arrested, after being allowed a reasonable opportunity under the close surveillance of the officer making such arrest to produce such certificate, by any officer charged with the enforcement of the Chinese-exclusion laws; and shall be taken by such officer before a justice, judge, or commissioner of a United States court in order that a warrant may be issued upon the oath of such officer for the commitment and trial of the said Chinese laborer.

RULE 25. The Supreme Court having decided that the lawful wife and minor children of a Chinese merchant may be admitted to the United States without presenting the certificate prescribed by section 6 of the act approved July 5, 1884, the attention of administrative officers is directed to the nature of the evidence required by section 2

of the act approved November 3, 1893, to establish the right of a domiciled Chinese merchant to readmission after temporary absence from the United States, and the said officers are directed to require such evidence as will give reasonable assurance that every Chinese applicant for admission as the lawful wife or minor child of a resident Chinese merchant sustains the actual relationship claimed to such merchant, and, in the case of a child, that such child is beyond question a minor.

RULE 26. The following officers have been authorized by their respective governments to issue the certificates prescribed by section 6 of the act approved July 5, 1884: The registrar-general for the British colony of Hongkong; the chief comptrollers of Chinese immigration at Victoria and New Westminster, British Columbia, for the Dominion of Canada; officers designated as superintendents of customs (or taotai) for the Empire of China. Until other officers are designated by their respective governments, only certificates issued by those above enumerated shall be accepted as conforming to the requirements of the law; and Chinese persons of the admissible classes coming from countries which have not designated officers to issue such certificates can not be admitted to the United States.

RULE 27. Chinese persons who gain admission to the United States as members of the admissible classes and who after admission become laborers shall be arrested as being unlawfully in this country, as provided in Rule 24.

RULE 28. The omission from a certificate prescribed by section 6 of the act approved July 5, 1884, of any of the information required by said section is fatal to the sufficiency of such certificate as evidence of the right of the person to whom issued to enter the United States.

RULE 29. Chinese persons applying for admission upon the ground of having been domiciled in the United States as merchants shall be required to establish, to a reasonable certainty, that they are actually owners of the business claimed or members of the firm owning such business, with proof of the amounts actually paid for their respective interests, the times at which such payments were made and, if residents of the United States during the period of registration, whether they failed to register and, if so, the reason therefor.

RULE 30. With the papers on appeal from a decision of the chief officer in charge at a port of entry there shall be transmitted to the Commissioner-General of Immigration all the evidence bearing upon the case appealed, including the evidence offered in accordance with the treaty and laws by returning Chinese laborers who have remained out of the United States for a period of time in excess of one year from the date of their departure to show that the delay was occasioned by their sickness or some other cause of disability beyond their control.

RULE 31. Every Chinese laborer holding a return certificate, if detained by his sickness or by other disability beyond his control, for a time in excess of one year after the date of his departure from the United States, shall produce to the chief officer in charge at the port of return, which must be the port from which said laborer departed, a certificate to that effect from the Chinese consul at said port, based upon an accompanying report by the United States consular officer at the foreign port at which said laborer embarked for the United States, that said consular officer has investigated the statements of said laborer and believes that he was unavoidably detained for the time specified and for the reason stated.

RULE 32. In considering evidence touching the right of a Chinese student to enter the United States, administrative officers should be governed by the opinion of the Solicitor of the Treasury Department (of June 15, 1900), that a Chinese student within the intention of the treaty of December 8, 1894, and of the laws, is "a person who intends to pursue some of the higher branches of study, or one who seeks to be fitted for some particular profession or occupation for which facilities of study are not afforded in his own country; one for whose support and maintenance in this country, as a student, provision has been made, and who, upon completion of his studies, expects to return to China."

RULE 33. Every Chinese merchant resident within the United States who desires to go abroad temporarily, to avoid unnecessary delay in securing admission upon his return, may transmit to the chief officer in charge at the intended port of departure, not less than thirty days prior thereto, affidavits of two credible witnesses, other than Chinese, showing said merchant's actual ownership, in whole or in part, of an established mercantile business in this country, the amount of his interest therein, the nature of his personal employment in conducting said business, and that during the entire year antecedent to the date of such affidavits he engaged in no manual labor except such as was necessarily incident to the conduct of said business. If after a thorough investigation said officer is satisfied of the truth of the statements contained in the above-mentioned affidavits, he may indorse thereon over his signature his finding to that effect, coupled with a statement that the said Chinese merchant will, upon his return to the port of departure and proper identification, be permitted to enter the United States, unless some of said statements should subsequently be shown to be false; provided, however, that said merchant still retains, unchanged, the mercantile interest owned by him at the time of his departure.

RULE 34. As an additional means of securing prompt action upon the case of every Chinese person seeking admission as a returning merchant, as well as to save him the risk of a possibly fruitless voyage,

the chief officer shall, at the time of departure of every such Chinese person, whose case has not already been investigated under Rule 33, furnish him with the following notice (properly filled out) and attached form of letter for his use in sending notification of his intended return:

OFFICE OF ——— ———,
PORT OF ——— ———,
——— ——— (Date) ——— — —.

SIR: In accordance with Rule 34 of Regulations issued by the Secretary of Commerce and Labor on the 27th day of July, 1903, you are hereby notified that, in order to avoid as far as possible the risk of making an unnecessary trip which would result from a failure to establish your right to admission, you should, at least ninety days and not exceeding four months prior to your intended arrival at this port, notify the undersigned officer of your intention to return, the approximate date thereof, giving your name and foreign address, and a statement of your claims to the right of admission, on the subjoined blank. You may now, or within the time above mentioned, submit the evidence required by law to establish your mercantile status. The said claims will, on receipt of such notice, be promptly investigated and a formal notification of the result of such investigation will be sent to you at the address given. This decision is not final, and you are not precluded, if such result is adverse, from obtaining upon your arrival at a port of the United States a further investigation of your claims.

Respectfully,

(Name of officer) ——— ———,
(Title of officer) ——— ———.

(Address) ——— ———,
(Date) ——— —, —.

CHIEF OFFICER IN CHARGE ENFORCEMENT CHINESE EXCLUSION LAWS,
Port of ——— ———.

SIR: In compliance with the above notification, delivered to me prior to my departure from the United States, you are informed that I intend to return thereto, through your port, per ——— on or about ——— —, 190–.

I departed from the United States on the steamship ———, which sailed from your port on ——— —, 190–.

I have filed with you the evidence required by law to support my claim of right to readmission. I am a merchant and member (or proprietor) of the store of ——— ———, at ———, in which my interest was, and still remains, $———.

I respectfully request that my claim be preinvestigated, and that I may be notified before ——— —, 190–, at the above address, whether I will be permitted to reenter the United States, and, if so, upon what condition.

Respectfully, (Name) ——— ———.

Upon the receipt of such notification, the chief officer in charge shall make, or cause to be made, a thorough investigation of the claim therein made and send due notice of his conclusions in regard thereto to the applicant who, upon arrival, shall establish his identity with the sender of the notification and submit such additional evidence as may be necessary to prove his right to admission. If the evidence previously secured shall establish the right of such applicant to admission, and is not controverted, then he shall be admitted without delay, but otherwise he shall be refused admission until he shall establish his right thereto.

RULE 35. Every departing Chinese laborer who has been furnished with a return certificate under the provisions of section 7 of the act approved September 13, 1888, must be informed by the officer by whom such certificate is granted that upon his return to the port of departure, as a prerequisite to admission there must exist one of the grounds recited in Article II of the convention of December 8, 1894, to entitle him to admission after a temporary absence from the United States.

RULE 36. The officer issuing a return certificate to a departing laborer shall at the time of such issuance furnish said laborer with the following notice (properly filled out) and attached form of letter for his use in sending information of his intended return:

OFFICE OF ——— ———,
PORT OF ——— ———,
(Date) ——— —, 19—.

——— ———

SIR: In accordance with Rule 36 of regulations issued by the Secretary of Commerce and Labor, on the 27th of July, 1903, you are hereby informed that, in order to avoid the risk of a possibly fruitless voyage, you should at least ninety days and not exceeding four months prior to your intended return to this port, notify the undersigned officer of the approximate date of such return, giving your name and foreign address on the subjoined blank form, and stating the ground or grounds on which you claim the right to admission to the United States, as well as the occasion of your delay, if there has been such delay in returning, beyond one year from the time of your departure. An investigation of your case will, on receipt of such notification, be promptly made and you will be formally advised of the result thereof by a letter sent to the foreign address given.

Respectfully,
(Name of officer) ——— ———,
(Title of officer) ——— ———.

(Address) ——— ———.
(Date) ——— —, ———.

CHIEF OFFICER IN CHARGE ENFORCEMENT CHINESE EXCLUSION LAWS,
Port of ——— ———.

SIR: In compliance with the above notification, delivered to me prior to my departure from the United States, you are informed that I intend to return thereto through your port, per steamship ———, on or about ——— —, 190–.

I was granted return certificate No. ——, dated ——— —, 190–, and departed from your port per steamship ——— on ——— —, 190–.

I claim the right of admission because I have in the United States (either):

A father, named ——— ———, or mother, named ——— ———, residing at ———; a child (or children), named ——— ———.

A lawful wife, named ——— ———, residing at ———, to whom I was married on the —— day of ———, and with whom I have continuously cohabited since the said ——— marriage.

The following property of the clear, unencumbered value of $———, ———, ———.

The following bona fide debts due me and pending settlement, and not evidenced by promissory notes or other similar acknowledgments of ascertained liability, and not colorably acquired for the purpose of evading the law:

Due from ——— ———, $———.
Due from ——— ———, $———.
Address of debtors, ——— ———.

I respectfully request that my claims be preinvestigated and that I may be noti-

fied at the above address before ——— —, 190–, whether I will be permitted to reenter the United States.

I was delayed —— days —— months beyond the year after my departure by ———, and will submit the evidence thereof required by the law and regulations.

Respectfully,

(Name) ——— ———.

RULE 37. Upon the arrival of any registered Chinese laborer at a port of the United States, he shall exhibit his return certificate to the chief officer in charge of the enforcement of the Chinese exclusion laws at said port, and if the evidence already secured in such a case establishes the right of such a returning Chinese laborer to admission and is not controverted, then he should be admitted without delay, but otherwise he shall be refused admission until he establishes his right thereto.

RULE 38. Administrative officers are hereby required, in accordance with section 7 of the act of September 13, 1888, to exact of every registered Chinese laborer, applying for a return certificate, not merely a statement of the ground, or grounds, on which such laborer claims a right thereto, but also proofs of the existence of such ground or grounds, either in the form of oral or of written testimony in detail by not less than two credible witnesses, who shall satisfy such officers that they have had opportunity to know the circumstances to which they testify. Until such proof is supplied, the investigation preliminary to granting or refusing the return certificate sought shall not be made.

RULE 39. If a returning Chinese laborer is admitted, his certificate of residence, which must have been left with the officer who granted him a return certificate, shall be returned to him and the said return certificate be taken up. After indorsing upon such return certificate his action in the case and the date thereof, the chief officer in charge shall forward it to the Commissioner-General of Immigration, accompanied, if the Chinese applicant is denied admission, by said laborer's certificate of residence.

RULE 40. Every Chinese person claiming the privilege of transit through the United States to foreign territory under the provisions of Article III of the convention of December 8, 1894, shall, as a condition precedent to being allowed such privilege, comply with the following requirements:

(*a*) The applicant shall be required to produce to the chief officer in charge of the enforcement of the Chinese exclusion laws at the port of arrival a prepaid through ticket across the whole territory of the United States, land or water, intended to be traversed (and to his alleged foreign destination according to the manifest of the vessel on which he arrives), and such other reasonable proof as may be required of him to satisfy the said officer that a bona fide transit only is intended and that the applicant does not seek the foreign destination named by him with an ulterior purpose of thereby gaining access to

the United States in violation of law; and such ticket and other evidence in writing presented by the applicant must be so stamped, or marked, and dated by the said officer, or his deputy, as to prevent their use a second time; but no such applicant shall be considered as intending in good faith to make such transit only if he has already, on same arrival, made application for and been denied admission to the United States.

(*b*) The applicant in such case, or some responsible person in his behalf, or the transportation company whose through ticket he holds, shall furnish to the said chief officer in charge a good and sufficient bond in the penal sum of $500 conditioned for applicant's continuous transit through and actual departure from the United States within a reasonable time, not exceeding in any instance twenty days from the date upon which said privilege is granted; but the said bond shall not be required of any such applicant who remains on shipboard for transit through the water territory of the United States, or who is transferred from one vessel to another vessel in a port of the United States for a similar transit, unless the vessel on which said applicant departs may touch at another port of the United States on the way to its foreign port or destination.

(*c*) The applicant in every such case shall furnish to said chief officer in charge, to be taken as directed by said officer, a photograph of himself in triplicate, and shall submit, if he is not a member of one of the classes exempted in Article III of the treaty of December 8, 1894, to the physical examination of his person, required by the Bertillon system of identification.

RULE 41. The chief officer in charge of the enforcement of the Chinese exclusion laws at the port of arrival shall prepare a descriptive list, to which one of the photographs required by Rule 40 (*c*) shall be attached, bound in book form, for file in his office, containing as to each Chinese applicant for the privilege of passing through the United States to foreign territory, the following information: Name, age, sex, last place of residence, and the data referred to therein by file number required for his identification. To the said descriptive list there shall be attached a dated and signed statement by the said chief officer in charge that applicant has complied with all the provisions of Rule 40, and that being assured of applicant's good faith the privilege of transit under bond has been accorded him.

RULE 42. Two copies of the bound descriptive list, required by Rule 41, shall be prepared by the chief officer in charge on detached blanks corresponding in form with the said bound descriptive list, to each of which shall be attached one of the photographs required by Rule 40 (*c*), and upon both of said photographs, as well as on the one attached to said bound list, shall be stamped the seal of the said chief officer in charge, so placed as not to cover any part of the face. One of said copies shall be forwarded by the first mail after it is prepared

to the officer in charge of the intended port of exit and the remaining one shall be given to the conductor of the train, or to the captain of the vessel, by which the Chinese person to whom they relate is carried, for delivery to the said officer at the port of exit.

RULE 43. One of the copies described in Rule 42 shall be retained by the officer in charge at the port of exit, for his files, and the other, after an indorsement has been made thereon, duly signed and dated, to the effect that the Chinese person named therein has been identified and has departed from the United States, shall be returned by mail to the officer by whom it was prepared, and its receipt by him, duly executed as herein required, shall be his authority for cancellation of the bond given on behalf of the Chinese person, as provided in Rule 40 (*b*), to whom said descriptive list refers.

RULE 44. Every Chinese person seeking admission to the United States under the provisions of section 3 of the act approved April 29, 1902, for the purpose of taking part in any fair or exhibition authorized by act of Congress, shall, as a condition precedent to such admission, comply with the following conditions, and officers charged with the enforcement of the Chinese exclusion laws shall likewise, so far as action on their part is required, conform thereto. This rule takes the place of Treasury Department Circular No. 5, Bureau of Immigration, dated January 7, 1903.

(*a*) Every such person shall furnish to the officer in charge of the enforcement of the Chinese-exclusion laws at the port of entry satisfactory evidence that he is a holder of a privilege from the officers of said exposition or an employee of a holder of such a privilege, engaged to take part therein.

(*b*) He shall furnish to the said officer in charge at the port of entry a photograph of himself, in triplicate, and shall submit to such examination as may be deemed necessary to insure his identification.

(*c*) He shall, if admitted, proceed immediately, by direct and continuous travel, to the said exposition, wherever located; remain there during his stay in the United States; engage while there solely in the occupation for which he was admitted; return within thirty days after the close of said exposition by direct and continuous travel to the port at which he was admitted and thence depart, by the first vessel sailing thereafter, to China or to the country of which he is a citizen or subject.

(*d*) He shall furnish to the United States officer in charge, by whom he is admitted, a bond of $500, with a responsible bonding and surety company as surety, conditioned for his immediate departure to said exposition grounds, his constant attendance and employment at said grounds, and his departure from the United States, all in accordance with the next preceding regulation.

(*e*) The requirements of the next preceding paragraph (*d*), as well as of paragraphs (*i*) and (*j*) hereinafter, shall not apply to Chinese mer-

chants seeking admission to make a display of their goods at such exposition, who shall be permitted to land upon presentation of a certificate to the foregoing effect, issued by their government and viséed by the United States consular or diplomatic officer at the port of departure.

(*f*) The following form of record shall be kept in duplicate by the officer in charge at the port of admission of all Chinese persons admitted in accordance with these regulations, the original to be kept on file at said port and the duplicate to be forwarded to the Bureau of Immigration, Department of Commerce and Labor:

[Form of Chinese record.]

Chinese Employee's Record of Admission.

DEPARTMENT OF COMMERCE AND LABOR. BUREAU OF IMMIGRATION. File No. — of Record ——. Name —— ——. Native of ——. Employed by —— ——, of ——, an exhibitor at the ——. When admitted, —— —, —. (Here attach photograph to both duplicate and original.)	No. — U. S. IMMIGRATION SERVICE, *Port of* —— ——, —— ——. This is to certify, that —— ——, a native of ——, who is duly accredited as an employee of —— ——, of ——, an exhibitor at the ——, U. S. A., has been permitted to enter the United States as such employee (or exhibitor) in pursuance of an act of Congress approved April 29, 1902. (Name of officer) —— ——, (Title of officer) ——. (Duplicate to be forwarded to Commissioner-General of Immigration.)

(*g*) An officer, or officers if necessary, will be designated to remain at the grounds of said exposition, whose duty it shall be to keep, in duplicate, a record, in the following form (unless hereafter modified), of every Chinese person admitted under these rules and regulations to take part in said exposition:

[Form of report.]

File No., ——. (Place to attach photograph.)	Name of employee or exhibitor, —— —— Sex, ——. Age, ——. Name of exhibitor by whom employed, —— ——. Character of work to be done in connection with exhibition, ——. What hours and how many per diem employed, ——. Time of arrival at exhibition grounds, ——. Time of departure from exhibition grounds, ——. —— ——. (Signature of Chinese employee or exhibitor.) —— ——. (Signature of officer or officers.) (Duplicate to be forwarded to Commissioner-General of Immigration.)

Said officer or officers shall also have such supervision over every such Chinese person and such duties in relation to them as are authorized by law and these rules and regulations and instructions issued thereunder.

(*h*) That one of the photographs provided for in paragraph (*b*) hereinbefore shall be sent by the officer at the port of arrival at which any such Chinese person is admitted to the officer or officers provided for in paragraph (*g*) of these regulations, who shall attach said photograph to the form of report prescribed, using it as a means of identification of the person whose portrait it is.

(*i*) Should any such Chinese person desire to leave the grounds of said exposition temporarily, he must apply to the officer provided for in paragraph (*g*) hereof, who may issue to him a dated card, giving his name and other particulars for his identification, and stating that he is permitted to absent himself from said grounds not longer than forty-eight hours from the date of said card, which shall, upon his return within the specified time, be delivered to said officer and canceled.

(*j*) All Chinese persons holding such cards who fail to return within the specified period shall be deemed to be unlawfully within the United States, and the bonds given on their behalf shall be forfeited and such person shall be deported. The officer designated to issue said cards shall promptly notify the Commissioner-General of Immigration of the absence, in violation of these regulations, of any Chinese person, in order that the penalty of the bond given in his behalf shall be collected and such Chinese person deported.

(*k*) Immediately after the expiration of the thirty days following the close of said exposition, the officers at the ports of arrival at which any such Chinese person is admitted are directed to report to the Commissioner-General of Immigration the total number, together with names, etc., of the Chinese persons who were admitted at their ports, respectively, for the purpose stated, and the numbers and names of those who have been properly identified and permitted to depart, in accordance with these regulations.

RULE 45. With a view to assisting in the decision of the cases of alleged Chinese merchants applying for admission to the United States as such, the following instructions are promulgated, for the guidance of all officers called upon to investigate the character of establishments in which such applicants claim to have an active or financial interest, to wit:

(*a*) In every case when investigation shows that the alleged mercantile establishment has operated in connection with it, a laundry, restaurant, gambling establishment, or other non-mercantile business, or where there is anything to indicate that such establishment is in fact different from that which is claimed, it is directed that photographs

be taken of the room or rooms occupied by the firm, and, if necessary, a view of the front or rear of the building or both.

(*b*) These photographs should be of a size not less than 5 by 7 inches nor more than 8 by 10 inches, and should be taken in such manner as to clearly show the real character of the business reported upon.

(*c*) The cost of each photograph shall include three unmounted prints thereof, together with the original negative. The latter should be taken in charge by the officer making the investigation, and by him carefully preserved, subject to the orders of the Department. If subsequently ordered sent elsewhere, negatives should be carefully packed in wooden boxes with excelsior filling, and should be properly labeled and shipped by express—never by mail—with suitable marks upon the exterior of package to insure care of the contents.

(*d*) One print of each photograph should be retained with the negative, the remaining two prints to accompany the report of investigation sent to the official who originally desired the inquiry made.

(*e*) Care should be taken to avoid excessive charges by photographers, but reasonable expense for this service will be allowed upon request made of the Bureau of Immigration, Department of Commerce and Labor, such items to be paid from the appropriation "Enforcement Chinese exclusion acts." Receipt of photographer will be required as a subvoucher in each instance.

RULE 46. The provisions of the laws regulating immigration, excluding those which prescribe payment of the head tax, apply to the residents and natives of Porto Rico and Philippine Islands, and, moreover, the provisions of the laws relating to the exclusion of Chinese apply to all such persons as are of the Chinese race, except those who are born in the United States. The citizens and residents of said islands, therefore, should be admitted to the United States upon the same conditions, except as to payment of the head tax provided for in section 1 of the act approved March 3, 1903, and subject to the same examinations as are enforced against people from countries over which the United States claims no right of sovereignty whatever.

RULE 47. The appropriation "Enforcement Chinese exclusion acts" should be charged with the following expenses:

(*a*) The cost of maintenance of Chinese persons who are taken into custody, up to and including the date upon which warrant issued by a United States judge or commissioner is received by the marshal.

(*b*) The cost of maintenance of Chinese prisoners, commencing with the date writ of deportation is first received by the marshal, provided the said order of deportation is not subsequently reversed upon appeal.

(*c*) The cost of deportation, including railroad and steamship fares of prisoners and marshal or deputy, authorized expenses for guard hire and maintenance en route.

Upon receiving writs of deportation marshals should at once make written report to the Commissioner-General of Immigration, Department of Commerce and Labor, Washington, D. C., giving names of the prisoners, where confined in jail, and when the period of appeal provided by section 13 of the act approved September 13, 1888, will expire. Instructions will then be issued as to the route to be followed, number of guards to be employed, and to whom accounts are to be presented or forwarded for settlement.

RULE 48. The Department of Justice, under date of August 26, 1897, gave the following instructions:

United States attorneys are hereby directed, either in person or by their assistants, to appear on behalf of the Government to secure the proper enforcement of the law at all hearings held in their respective districts, to determine whether Chinese persons or persons of Chinese descent, who have been arrested under the Chinese exclusion laws, have a lawful right to remain in this country.

RULE 49. Officers in charge of the enforcement of the Chinese exclusion law shall not issue any certificate, letter, or other document, or any duplicate thereof, other than those provided for by law and these regulations, setting forth the status of a Chinese person as a resident of this country, or otherwise indorsing such person.

RULE. 50. It shall be the duty of the officer in charge at the port of entry to register and make a Bertillon record of all Chinese laborers arriving at or departing from said port, which record shall show the individual, family and tribal name, age, occupation, when and where followed, last place of residence, physical peculiarities, and such other pertinent information as may assist in the identification or investigation of such person in case of his returning to the United States. A duplicate of the record of such registry shall be transmitted to the Commissioner-General of Immigration for each such vessel or railway train.

RULE 51. Officers employed in the administration of the immigration and Chinese exclusion laws are notified that all communications to the Department upon official matters must be addressed to the Commissioner-General of Immigration or to the Secretary of Commerce and Labor.

RULE 52. Under the authority conferred by section 7 of an act approved February 14, 1903, entitled "An act to establish the Department of Commerce and Labor," the authority, power, and jurisdiction in relation to the exclusion of Chinese persons and persons of Chinese descent heretofore vested by law and treaty in collectors of customs have been conferred upon and vested in the following officers, under the control of the Commissioner-General of Immigration:

Officer in charge.	Station.	Jurisdiction.
Geo. B. Billings	Boston, Mass.	Connecticut, Rhode Island, Massachusetts, Maine, New Hampshire, and Vermont.
Wm. E. Howard	New Orleans, La.	Louisiana and Mississippi.
Jno. J. S. Rodgers	Philadelphia, Pa	Pennsylvania, New Jersey, and Delaware.
Kazis Krauczunas	Ketchikan, Alaska	Alaska.
Geo. W. Webb	Tucson, Ariz.	Arizona and New Mexico.
L. T. Plummer	Chicago, Ill	Illinois, Kentucky, Tennessee, and Indiana.
H. E. Tippett	Detroit, Mich	Michigan.
W. D. Morse	Minneapolis, Minn	Minnesota and Wisconsin.
Alfred Hampton	Helena, Mont.	Montana and Idaho.
Isaac H. Marrow	Toledo, Ohio.	Ohio.
Louis Adams	El Paso, Tex.	Texas.
A. W. Paine	Salt Lake City, Utah	Utah, Nevada, and Wyoming.
James McCabe	Denver, Colo	Colorado, Nebraska, Kansas, Indian Territory, and Oklahoma.
A. J. You	Mobile, Ala	Alabama and Georgia.
Richard K. Campbell	Bureau of Immigration	Maryland, Virginia, West Virginia, and District of Columbia.
James R. Dunn	St. Louis, Mo.	Missouri, Iowa, and Arkansas.
F. W. Berkshire	New York, N. Y.	New York.
J. H. L. Eager	Tampa, Fla.	Florida.
W. F. Schlaar	Portal, N. Dak	North and South Dakota.
H. H. North	San Francisco, Cal.	California.
Thos. M. Fisher	Port Townsend, Wash	Washington.
J. H. Barbour	Portland, Oreg	Oregon
J. K. Brown	Honolulu, Hawaii	Hawaii.
F. V. Martin	San Juan, P. R.	Porto Rico.

RULE 53. The certificates prescribed by section 6 of the act of July 5, 1884, on which Chinese of the exempt class were admitted to the United States, should be canceled by officers in charge by writing across the face thereof in red ink the fact of the admission and the date thereof.

RULE 54. In the inforcement of the provisions of section 2 of the act of November 3, 1893, relating to the application for admission of alleged returning Chinese merchants, it will not be enough to have witnesses testify that an applicant, for at least one year before his departure from the United States, was not engaged in the performance of any manual labor except such as was necessary in the conduct of his business as such merchant, but the testimony should show specifically the kind of work the Chinaman has done during the entire year, and, after detailing the character of such work, should say that he has not performed any other labor than that specifically set forth. (S. 21039.)

RULE 55. A Chinese person claiming the right to be permitted to leave the United States and return thereto as a duly registered laborer shall apply in person to the officer in charge of the district[a] in which he resides at least a month prior to the time of his departure; shall deposit with said officer a certificate of registration from the internal-revenue collector for the district in which he resided at the time of registration, and shall make on oath before the officer in charge, in writing, a full statement descriptive of his family, or, property, or debts, as the case may be, and fully describing himself, giving his age, name, height, local residence, occupation, color of eyes and com

[a] See Circular on page 54.

plexion, and distinguishing marks, if any, and naming the port from which he expects to depart from the United States, which shall be one of those designated in Rule 4. Such written description shall be filed in duplicate, and to each shall be permanently attached a photograph of the Chinese person referred to therein. The officer in charge, or his deputy, with whom such certificate of registration and written description are filed, will make a thorough examination to ascertain whether the applicant is registered, and as to the accuracy of the descriptive statement: that the photograph accompanying the latter for the purpose of identification is that of the person described in such certificate and statements, and that his height, weight, and descriptive physical marks are accurately given, and will then write his official signature in part across such photograph and in part upon the adjoining portion of the written descriptive statement, to prevent substitution. The said officer in charge will then trainsmit the certificate of registration to the Commissioner-General of Immigration, for comparison with the record thereof in his office, in respect not only to name and date therein, but in all other particulars. At the same time the said officer in charge will in person or through an immigrant or Chinese inspector make thorough investigation as to the facts stated therein. As soon as practicable thereafter the said officer in charge will transmit such registration certificate, one copy of the sworn statement, and the reports of investigation to the officer in charge of the district from which such Chinese laborer intends to depart from the United States, and at the same time will transmit to said Chinese laborer the duplicate copy of such sworn statement, with instructions to present the same in person to the officer in charge at the port of departure. Upon the receipt of such certificate of registration, the duplicate copies of said sworn statement, and the reports of investigation, the officer in charge or his deputy at said port of departure, after one month from the date of filing of the original application in the office of the officer in charge of the district in which said Chinese laborer resides, if he finds that the person presenting such duplicate statement is the Chinese person therein described, and is entitled thereto, may sign and give to such person on his departure from said port a certificate containing the number of the description referred to, in the following form:

No. ——. UNITED STATES OF AMERICA.

Certificate issued to Chinese laborer departing from the United States with the intention of returning thereto under the treaty between the United States of America and the Empire of China signed March 17, 1894, and proclaimed by the President of the United States December 8, 1894.

This is to certfy that —— ——, a Chinese laborer, described in identification paper numbered ——, port of ——, departed from this port for —— on this ——

day of ——, 190–, with the intention of returning to the United States via this port within twelve months from said date.

Given under my hand and seal this —— day of ——, 190–, at ——, State of ——.

[SEAL.] ——— ———,

Officer in Charge, Port of ——, District of ——.

If the last-named certificate be transferred it shall become void, and the person to whom it was given by the officer in charge shall forfeit his right to return to the United States.

The certified description should be carefully preserved by the officer in charge at the port of exit as a means of identification of the Chinese person therein mentioned, who, in order to avail himself of the privilege conferred by said article II of the treaty, must return via the port of departure within one year from the date of his leaving the United States, unless prevented by sickness or other disability beyond his control.

RULE 56. The officer in charge at the port of departure shall send a copy of the certified description, with photograph of the person therein named attached, and also one of the stubs hereinafter referred to, to the Commissioner-General of Immigration; said stub and said copy of the certified description shall be filed together.

Certificates as above described, with a serial number attached, will be issued to officers in charge at ports from which Chinese depart upon application therefor to the Commissioner-General of Immigration. In all instances, officers in charge will fill out the blanks on the stubs of the certificates. Officers in charge will submit reports to the Commissioner-General of Immigration weekly of Chinese persons departing from and returning to their respective ports, debiting themselves with the number of certificates received from the Department, crediting themselves with the number used and reporting the number remaining on hand. The officers in charge shall cancel all certificates presented on admission of returning Chinese and forward said certificates so canceled to the Commissioner-General of Immigration.

RULE 57. Certificates of residence issued to Chinese registered laborers, if found elsewhere than in possession of persons to whom issued, should be taken up and deposited with the officer in charge, subject to orders of the Department.

RULE 58. Chinese laborers duly registered under act of 1892 are not required to register under act of 1893 to secure admission. (T. D., 23344, November 7, 1901.)

RULE 59. Only persons registered as Chinese laborers are entitled to the return certificate provided for by section 6, act approved May, 1892. (T. D., 23525, February 20, 1902.)

RULE 60. The authority, power, and jurisdiction in relation to the registration of Chinese lawfully resident in the United States, heretofore vested by law in collectors of internal revenue, are hereby transferred to and conferred upon H. L. Pittenger, Chinese inspector, Bureau of Immigration, Washington, D. C.

RULE 61. In view of the provisions of section 1 of the act approved April 29, 1902, it will be necessary for Chinese persons of the classes mentioned in article 3 of the convention of December 8, 1894, who are resident in the insular territory of the United States, to comply with the terms of section 6 of the act approved July 5, 1884, and for this purpose the permission of such persons to go from one insular territory to another insular territory of the United States, or from such insular territory to the mainland territory of the United States, shall be granted by an officer designated for that purpose by the chief executives of said insular territories, respectively, and the duties imposed by section 6 of the act approved July 5, 1884, upon United States diplomatic and consular officers in foreign countries in relation to Chinese persons of the said classes shall be discharged by the chief officers in charge of the enforcement of the Chinese exclusion acts at the ports, respectfully, from which any members of such excepted classes intend to depart from any insular territory of the United States.

F. P. SARGENT,
Commissioner-General of Immigration.

Approved.
GEO. B. CORTELYOU,
Secretary of Commerce and Labor.

[1903.—Bureau Circular No. 4.]

Supplemental to Rule 55, Chinese Regulations, adopted July 27, 1903.

DEPARTMENT OF COMMERCE AND LABOR,
BUREAU OF IMMIGRATION,
Washington, December 1, 1903.

To whom it may concern:

In consideration of the hardships imposed upon resident Chinese laborers, as a result of the comparatively small number of officers designated by Rule 52 of the Departmental Regulations of July 27, 1903, to discharge the duties heretofore imposed upon collectors of customs by the various laws in relation to Chinese exclusion, under the authority of section 7 of the act approved February 14, 1903 (32 U. S. Stat., p. 825), the immigration officer whose official station is most convenient of access to any registered Chinese laborer desiring a return certificate is hereby designated as the appropriate officer before

whom application for such return certificate may be made, to whom proofs of the claims upon which any such application is based are to be submitted, and by whom an investigation and report thereon are to be made to the officer in charge at the intended port of departure from the United States.

In other respects the provisions of Rule 55 of Departmental Regulations of July 27, 1903, remain in full force, except that it will not be necessary for the investigating officer to give hereafter, in his report to the officer in charge at the port of departure, the weight of the Chinese applicant for a return certificate.

F. P. SARGENT,
Commissioner-General.

Approved.
GEO. B. CORTELYOU,
Secretary.

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FILE COPY.

Supreme Court of the United States.

No. 501.

THE UNITED STATES,

Petitioner,

vs.

SING TUCK or KING DO and thirty-one others.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS, FOR THE SECOND CIRCUIT.

BRIEF FOR RELATORS.

R. M. Moore,
W. W. Cantwell,
Of Counsel for Relators.

Appeal Printing Co., 14 Vesey St., New York. Tel. 192 Cortlandt.

34034

Supreme Court of the United States.

THE UNITED STATES, Petitioner, vs. SING TUCK or KING DO and thirty-one others.	No. 591.

ON A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS, FOR THE SECOND CIRCUIT.

Brief for Relators.

The petitioners, thirty-two in number, applied to the United States Circuit Court for the Northern District of New York, for a writ of *habeas corpus*, which writ was allowed October 23d, 1903, and returnable in the United States Circuit Court House at Utica on the 10th day of November, 1903. The petitioners alleged that they were Chinese persons born within the United States of America and citizens thereof; that they were restrained of their liberty and detained by D'Arcy, Chinese Inspector at Malone, New York, in what

is known as the Detention House, an establishment jointly maintained by the United States Government and the Canadian Pacific Railroad, a foreign corporation, and that the petitioners had been denied admission to the United States by the said inspector.

And they further alleged that the said Chinese Inspector had no right or authority to pass upon the rights of the said Chinese to enter the United States, but had authority only to pass upon the rights of *aliens* seeking to enter the United States.

Petition, pages 1 and 2.

They allege that they were born in the United States, and have the right to have that allegation tried and determined in the courts of the United States, and by the judicial department of the Government, and that the question of citizenship cannot be determined by the executive officer of the government so as to deprive them of their rights to appeal to the courts for a due trial and determination of that question of fact, that *due process of law* guarantees them this right. The return to the writ alleges the denial of admission by the Inspector and that such denial cannot be reviewed by a writ of *habeas corpus*.

The Circuit Court dismissed the writ and remanded the prisoners, holding that the Circuit Court had no jurisdiction to review the determination of the immigrant officer of the United States, denying the petitioners herein the right to enter the United States (Opinion, pages 60–73), and an order was accordingly entered, dismissing the writ and remanding the prisoners, which order was entered on the 3d day of December, 1903 (page 74).

From that order the petitioners duly appealed

to the Circuit Court of Appeals, Second Circuit, and in their assignment of error (page 76) they assert that the judgment is erroneous and contrary to law, and that the said judgment, order and decision should have allowed to the petitioners the issuing of the writ of *habeas corpus* to determine the issues raised by the petition and answer, to wit.: Were and are the petitioners citizens of the United States, which issue is a question of fact, and could only be determined by taking evidence on the issues raised by the petition and answer, and that the said decision, judgment and order was further erroneous in that it held the alleged decision of the immigration officer to be final and *res judicata;* that, as a matter of fact, no competent or legal decision was ever rendered by the said inspector, and even if such a decision had been legally rendered by the proper immigrant officer, it would not be final and *res judicata* as to the question of citizenship, as the inspector's authority is limited to the rights of *aliens* seeking to enter the United States.

The Circuit Court of Appeals reversed the District Court and remanded cause for enquiry into the status of relators (Opinion, pages 80-81). From that decision a writ of certiorari was allowed to this court.

POINT ONE.

A person of Chinese descent born within the United States is a citizen thereof.

The provisions of the Chinese Exclusion Act do not apply to persons born within the United States of Chinese parents.

U. S. v. Wong Kim Ark, 169 U. S., 653.

Congress has delegated to the immigration officer the right to exclude from the United States certain *aliens* seeking admission; among them a class of Chinese aliens, but in all of the statutory provisions relative to the rights, powers and duties of the immigration officer with regard to determining admission of persons seeking to enter the United States, the word *alien* is used and their powers and duties begin and end with *aliens*, and it is contended that it is because the power and jurisdiction of an immigrant officer is limited to aliens only; that the United States Supreme Court in the Wong Kim Ark case decided that the provisions of the Chinese Exclusion Act did not apply to Chinese persons born within the United States.

The immigrant officer has no common law power, authority or jurisdiction, hence his powers must be limited to those conferred by statute, and those deal exclusively with *aliens*, therefore, it is only where the applicant is concededly an alien and seeks to enter as an alien, that the inspector has jurisdiction, and in such case his decision is not reviewable in the Constitutional Courts.

POINT TWO.

Citizenship is a right. Every person claiming it has the constitutional right to have it determined judicially in a constitutional Court.

Congress cannot withdraw from judicial cognizance a matter which is the subject of a suit at common law or in equity. This right of citizenship is safe-guarded by the Constitution of the United States, which provides that "no person shall be deprived of life, liberty of property, without *due process of law.*" That the right of citizenship is a liberty and property right is found by the Trial Court (page 91, fol. 271). "Citizenship is a question that involves the status, liberty and property rights of the person or persons refused admission or proceeded against. A citizen has the right to live in the country of which he is a citizen; to go and come as he pleases, even to go and return from a foreign country if he conforms to the quarantine and other laws on the subject; and to own property, and exercise many rights not belonging to an alien."

If these rights existed and are safeguarded by the Constitution and can only be taken away by a judicial determination it follows, that the writ of *habeas corpus* to review the findings of the immigrant inspector, who is in no sense a judicial officer, and whose powers are limited to the investigation of rights of aliens, is not a decision such as is contemplated by the Constitution of the United States in safeguarding the liberty and property rights of citizens.

The only decisions that we have been able to find where this question has been directly before the

court was in the 94 Fed. Rep., at page 834, which was a decision of the Circuit Court of Appeals. In that case the defendant had been denied admission by the collector at the port of San Francisco; claim was made by the petitioner that he was a citizen of the United States and as such had the right to review the collector's findings by *habeas corpus*, which he did. The precise question as to whether the decision of the collector was *res judicata* where the claim was made by the petitioner that he was a citizen and not an alien was not directly passed upon in the case, but the court in determining that case makes use of this language: "Before taking up the merits of the case we will first inquire whetner the case is regularly and properly before the court," and they solved that question in favor of the propriety of the proceeding, which was, as in this case, a proceeding by *habeas corpus*.

In Gee Fook Sing v. United States (49 F. R., 146), the Circuit Court of Appeals in the Ninth Circuit re-affirms the doctrine of the Wong Kim Ark case, namely, that the provisions of the various Chinese Exclusion Acts do not apply to a Chinese born within the United States and adds: "That any person alleging himself to be a citizen of the United States, and desiring to return to his country from a foreign land, and that he is prevented from doing so without due process of law, and who on that ground applies to any United States Court for a writ of *habeas corpus*, is entitled to have a hearing and a judicial determination of the facts so alleged; and that no act of Congress can be understood or construed as a bar to such hearing and judicial determination."

This case was cited and followed in the opinion of the Circuit Court of Appeals in the case at bar. (See Opinion, page 81.)

Again in the Won Kim Ark case the United States Supreme Court, by implication, at least, ratifies the legality and regularity of the practice here adopted by discharging the defendant on a writ of *habeas corpus* after he had been denied admission by the collector.

The relators were restrained of their liberty by an administrative officer of the government. If they are citizens then the administrative officer had no power to detain them, much less to refuse them entry. The only remedy for the relators, by which the question of citizenship can be settled, is an application for a writ of *habeas corpus*, and the District Court has jurisdiction thereof.

> Jew Wong Loy vs. United States, 91 Fed. Rep., 240.

In such case the duty of the court is to inquire into the legality of the detention which is admitted. The performance of this duty is not a review of the action of the Chinese Inspector. The pretended refusal of the inspector to admit the relators was void for want of jurisdiction and there was consequently no action and no refusal by him. Prior to the Act of August 18th, 1894 (28 Stat., p. 390), the refusal of the inspector was not binding upon the courts.

> *In re* Jung Ah Lung, 25 Fed. Rep., 141, and confirmed in the 124 U. S., p. 621.

The Act of 1894 above referred to merely provided that in every case where an *alien* is excluded from admission the decision of the appropriate immigration officer, if adverse, shall be final unless reversed on appeal to the Secretary of the Treasury.

This act has no force when applied to a per-

son seeking admission upon the ground of citizenship.

The refusal to grant the writ of *habeas corpus* would be a practical suspension of the privilege in contravention of the Constitution; the writ having been issued, the duty of the court is to investigate and determine whether the restraint complained of is unlawful, viz., is the petitioner a citizen. Such inquiry and determination is not in review of the action of the inspector but is independent thereof.

The trial court in his opinion (page 61) says: "This court will take testimony and determine the question of citizenship unless the decision of the inspector * * * not appealed from is final and conclusive, *res judicata*, on the question of citizenship."

Thus holding as above contended that it was the duty of the court to investigate the issues of citizenship raised by the petition and answer, unless he was estopped from so doing by the decision of the inspector, and finally holding that the decision of the inspector is *res judicata*, and therefore the court cannot take evidence upon the question of citizenship. This was error.

As above stated, the decision of the inspector is final and *res judicata* only in case of an *alien*, and the jurisdiction of the inspector depends upon the applicant being an *alien*, hence, the question here raised as to whether the applicant is an alien or a citizen is one that goes to the jurisdiction of the inspector, and if it be determined that he is a citizen then the inspector, in assuming to pass upon his right to enter, acts without jurisdiction.

It would be a strange rule of law that would permit an executive officer to decide in his own favor a question upon which his jurisdiction depended and then assumed to act upon that juris-

diction, and the question of his right or jurisdiction to act could not be reviewed in the courts. A question of jurisdiction of a court, even, is always a question that may be raised by *habeas corpus*.

POINT THREE.

If the contention of the respondent is sustained, then the constitutional right to a writ of habeas corpus is denied.

Under the special rules of practice for the United States Courts for the Northern District of New York, it is provided that no application for a writ of *habeas corpus* shall be allowed in a Chinese case until after the applicant has been denied admission by the appropriate immigration officer at Malone, New York, hence, by a rule of practice, the petitioners are denied the right in a Judicial Court to seek their release from confinement until after the inspector has denied them admission; and then by a rule of law, if the decision of the Trial Court herein is to be sustained, they are denied the writ. As well might they have taken the short cut and said that no writ of *habeas corpus* should issue in Chinese cases. Notwithstanding the constitutional guaranty that a writ of *habeas corpus* should not be denied or suspended, except in certain cases therein provided. Under this procedure no application can be made for a writ until a certain thing has been done to the detriment of the applicant, and after that thing is done according to the rule of law laid down by the Trial Court the writ will not lie.

POINT FOUR.

The pretended trial and adjudication by the immigrant inspector in these cases was not due process of law.

Under the statute the Secretary of Commerce and Labor has the right to make such rules and regulations for the carrying into effect the provisions of the Chinese Exclusion Act as he may deem proper.

On the 1st of July, 1903, in pursuance of such authority the said secretary adopted many rules, among them the following:

"Rule 6. Immediately upon the arrival of Chinese persons at any port mentioned in Rule 4, it shall be the duty of the officer in charge of the administration of the Chinese exclusion laws to adopt suitable means to prevent communication with them by any persons other than officials under his control, to have said Chinese persons examined promptly, as by law provided, touching their right to admission and to permit those proving such right to land."

"Rule 7. The examination prescribed in Rule 6 should be separate and apart from the public, in the presence of the Government officials and such witness or witnesses only as the examining officer shall designate, and, if upon the conclusion thereof, the Chinese applicant for admission is adjudged to be inadmissible, he should be advised of his right of appeal and his counsel should be permitted, after duly filing notice of appeal, to examine, but not make copies of, the evidence upon which the excluding decision is based."

"Rule 21. The burden of proof in all cases rests upon Chinese persons claiming the right of ad-

mission to, or residence within, the United States, to establish such right affirmatively and satisfactorily to the appropriate *Government officers*, and in no case in which the law prescribes the nature of the evidence to establish such right shall other evidence be accepted in lieu thereof, and, in every doubtful case, the benefit of the doubt shall be given by administrative officers to the United States Government."

And the pretended trial and adjudication in these cases was had under and in pursuance of these rules. An adjudication of such a character in any court, whether constitutional or not, cannot be said to be an adjudication according to *due process of law*. A trial which excluded one of the parties to it from all communications with any person except those opposed to them in the suit, as provided in Rule 6, or which provided for "only such witnesses as the examining officer shall designate" and which does not permit a party to have counsel until after the adjudication is had, or communicate with counsel, witnesses or friends in any manner whatsoever until after the adjudication is had, cannot be said to be an adjudication according to *due process of law*.

The relators are deprived of their liberty without due process of law.

(*a*) The immigrant inspector is not a judicial officer.

(*b*) The relator is not permitted to be represented by counsel or to consult counsel.

(*c*) The relators, under the rules laid down by the department above quoted, could not produce witnesses, except such as were designated by the examining officer.

(*d*) They could not consult with friends and witnesses to prepare any case they might present.

(*e*) The benefit of the doubt, if any existed, is declared to be in favor of the Government, contrary to the rules of evidence.

(*f*) The relators were not apprised of the charge against them or the nature and cause of their detention.

(*g*) The relators had no notice of the time or place of the examination and no opportunity to produce witnesses, and no right to examine them themselves or by counsel.

(*h*) No right of appeal to a judicial tribunal was accorded the relators.

(*i*) The rules above referred to constitute a delegation of power to an administrative officer in derogation of the common law rights of a citizen and permits the officer to make rules of evidence, procedure, etc.

"It is a principle that lies at the foundation of all just government that no man shall be deprived of his life, liberty or property without due process of law. Every disregard of this principle by courts, legislatures or citizens tends directly towards distrust, insecurity, disorder and anarchy."

Burton v. Platter, 10 U. S. App., 657.

"The legislature is not vested with the power to arbitrarily provide that any procedure it may choose to declare such shall be regarded as due process of law."

Colon v. List, 153 N. Y., 188.

Article 14 of the amendments of the Constitution of the United States is a restraint on the legislative as well as on the executive and judicial

powers of the government, and cannot be so construed as to leave Congress free to make any process "due process of law" by its mere will.

Meyers v. Shields, 61 Fed. Rep., 713.
Holden v. Hardy, 169 U. S., 366.
Murray v. Hoboken Land Co., 18 How., 272.
Dorman v. State, 34 Ala., 216.

In the latter case the court said:

"If life, liberty and property could be taken away by the direct operation of a statute, the enjoyment of these rights would depend upon the will and caprice of the legislature, and the provision would be a mere nullity. * * * An act of the legislature is not, and nothing less than a regular judicial trial is 'due process of law' within the meaning of this clause of the constitution."

See, also,

In re Ziebold, 23 Fed. Rep., 791.

Daniel Webster, in his argument for the plaintiffs-in-error in Dartmouth College v. Woodard, 4 Wheat., 518, defined "due process of law" thus:

"By the law of the land is most clearly intended the general law; a law which hears before it condemns; which proceeds upon inquiry and renders judgment only after trial. The meaning is that every citizen shall hold his life, liberty, property and immunities under the protection of the general rules which govern society."

Applying this definition many times quoted by our courts with approval, to the case of the relators, we find that the relators had no hearing in any complete sense of the term and no trial in any sense. They had no counsel and were not permitted to consult counsel. They could produce

no witnesses except such as were designated by their accusers. The benefit of the doubt, if any existed, was taken to be against them. They were given no notice of their trial. They were not even apprised of the charge against them or the nature and cause of their detention. They had no opportunity to produce any witnesses until after the examining officer had concluded his examination of the relators. Such a hearing lacks every semblance of a trial where orderly procedure governs.

As applied to judicial proceedings the term "due process of law" means a course of proceeding according to those rules and principles which have been established in our system of jurisprudence for the protection and enforcement of private rights. It is imperative that there be a court of competent jurisdiction; that the proceeding be regular and appropriate to the question involved; and that the trial be a fair one.

Rees v. Watertown, 19 Wall, 107.
Carr v. Brown, 38 Atl. Rep., 9.
Burton v. Platter, 10 U. S. App., 657.
Davidson v. New Orleans, 96 U. S., 97.
Dwight v. Williams, 4 McLean, 581.
Parsons v. Russell, 11 Mich., 113.
Huber v. Riley, 53 Pa. St., 112.
In re Ah Lee, 5 Fed. Rep., 899.
Pennoyer v. Neff, 95 U. S., 723.

"Due process of law" cannot be had without notice of the proceeding. Notice is an essential element of the term "due process of law."

Hennessey v. Volkening, 30 Abb. N. Cas. (N. Y. Super, Ct.), 100.

"Due process of law implies the right of the person affected thereby to be present before the

tribunal which pronounces judgment upon the question of life, liberty or property in its most comprehensive sense; to be heard by testimony or otherwise, and to have the right or controverting by proof every material fact which bears on the question of right in the matter involved. If any question of fact or liability be conclusively presumed against him, this is not due process of law."

Ziegler v. South, etc., Ala. R. Co., 58 Ala., 594.

Due process of law means that the party shall have his day in court; this means the right to introduce evidence, examine and cross-examine witnesses for and against him, be represented by counsel if he so desires, and to have the questions asked and testimony given in conformity to the rules of evidence as established by our courts.

Brown v. Hummel, 6 Pa. St., 86.
Jenson v. Union Pac. R. R. Co., 6 Utah, 253.

None of these elements which constitute due process of law entered into the pretended trial of the relators by the inspector. And even if they did the tribunal was not one of competent jurisdiction to determine the question at issue.

The laws relating to the exclusion of Chinese are inapplicable to Chinese persons born in the United States. Such persons coming to our country are not immigrants, and are not Chinese persons. They are citizens of Chinese descent. The immigration inspector or Chinese inspector has no shred of authority over such persons. The mere allegation of the applicant for admission that he

is a citizen of the United States entitles him to a full judicial determination of that fact, and when denied him his proper remedy is this writ. Not even an act of Congress can be a bar to such judicial hearing and determination. The Chinese inspector or immigrant officer in charge is not invested by Congress with judicial powers over citizens. His acts and determinations relate solely to aliens. His office possesses none of the characteristics of a judicial tribunal. On the contrary, he is invested with certain powers and duties which are so abhorrent to the judicial determination of facts that no court of law would adopt them.

The rules above quoted seem a sufficient negative answer to the question, "Was the proceeding before the inspector due process of law?" Taken in connection with the statute and decisions we contend that it is impossible to bring the examination and adjudication of the inspector within these terms.

POINT FIVE.

There was no evidence before the inspector upon which he could base a judicial determination.

All of the petitioners relying upon their citizenship, and the rights that go with such citizenship, to wit.: to go and come at will, and acting under advice of counsel, ignored the immigration officers at Malone, New York, and refused to present any case whatever before them, and refused to answer any questions put to them, as it appears by the examination of the several petitioners (Case, pp. 6-58). If, as they claimed, they were citizens, they

had a perfect right to ignore the pretended authority and jurisdiction of the inspector and resist any interference with their persons.

Notwithstanding this fact, the Trial Court holds (p. 72) "The petitioners cannot complain if when called upon to speak, and when it was their duty to speak they remained mute, refusing to present the facts calling for a favorable decision, if such facts existed." This conclusion is erroneous and contrary to law. It makes no difference whether the skin of the citizen is white or yellow, if he be a citizen of the United States. The Chinese has as much right to go and come at will as has the learned trial judge or any other of our citizens, and would it be urged upon this court that if a white citizen coming from Montreal to New York City over the same route attempted by these petitioners, was taken from the train at Malone by the inspector, and because of his refusal to answer questions put to him by the inspector, or submit proof of citizenship, he should be put into a house of detention and finally turned back from the borders of the United States at the mere whim or caprice of the inspector upon the ground that he was an alien of the prohibited class, and if such person be white, would he be denied a writ of *habeas corpus* to determine whether or not he were a citizen. If such a construction be placed upon our law, Immigration Inspectors can be stationed at various border ports of the United States, and according to their own whims and desires may banish from the United States any of its citizens, either upon reasonable grounds or upon no reasonable or legal grounds, and there is no redress for that citizen, such a holding, we contend, borders on anarchy and is absurd.

Notwithstanding the fact that the record discloses that there was no evidence had or taken in

these cases, the inspector returns in his fourth count (p. 5): "That all the evidence produced by the said Bok Wah was submitted to the said F. W. Berkshire, and, after the same was duly considered by the officer aforesaid, it was adjudged by him, on October 13th, 1903, that the said application was an alien Chinese person, and not entitled to enter or remain in the United States."

That is a decision arbitrary in its character, based upon no evidence whatever and the result of a mere whim or caprice of the inspector, and bears no semblance to due process of law.

Under the rules adopted by the Department of Commerce and Labor relative to Chinese seeking to enter the United States above quoted, it is patent to this court that a fair, impartial, full and complete hearing of the rights of a Chinese person claiming citizenship cannot be investigated and determined by the Inspector, and, therefore, we say that they acted wisely in remaining mute when the Inspector sought to determine their rights in such an arbitrary manner as the rules quoted provide, and in seeking at least to enter a court of justice, where the evidence upon both sides may be presented in an orderly and legal manner, and none but competent evidence submitted, whether for or against the applicant, and if any error is committed, it may be reviewed in a legal manner.

The decision of the Inspector is generally based upon hearsay, incompetent and unreliable testimony, and for that reason we say that any citizen should hesitate to submit his right to be and remain in his own country to such a tribunal, and if there is a legal way to avoid leaving the final determination of that issue to such a tribunal he should seek his remedy.

POINT SIX.

A Chinese inspector is in no sense a judicial officer.

Section 1 of Article 3 of the Constitution, provides: "The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as Congress may from time to time ordain and establish."

Section 2 provides; "That judicial power shall extend to all cases, in law and equity."

It is clear from the above that an immigration officer is not, and cannot be, a judicial officer and the trial court so finds (page 72). "Neither the Commissioner nor the inspector, etc., is exercising the judicial power of the government for it is not vested in either of them, and, as said, cannot be. The Constitution, as we have seen, vests this power in the courts alone."

It must necessarily follow that if the determination of a question of citizenship presents a case in law under Section 2 of Article 3 of the Constitution, it cannot be *finally* determined except by the judicial power, namely, the Supreme Court and such inferior courts as Congress may from time to time ordain and establish.

While the learned Judge in the opinion written herein cites numerous authorities justifying the action of the immigration officer in denying applicants for admission the right to enter the United States, all of these cases are cases where the applicant was concededly an alien, with the exception of the Chin Bak Kan vs. U. S., 186 U. S., 193, and the learned Judge seeks to justify his conclusion that the decision of the inspector is *res judicata* herein under the holding

in that case, and in so doing the court likens a United States Commissioner to an immigrant officer. It seems to us that there is a marked distinction between the powers and duties of the two, as has been already pointed out. An immigration officer's powers, duties and investigations begin and end with aliens, while the commissioner, by law, is empowered with the duty of investigating and determining the right of a Chinese person within the United States to be and remain therein, which necessarily carries with it the right to investigate as to citizenship. Moreover, in the case of the commissioner, the person claiming citizenship is not denied his right to have that question determined according to a constitutional judicial power of the United States, because an appeal is allowed to him to the various courts of the United States, and the court in writing the opinion in the Chin Bak Kan recognizes that distinction and makes it clear, and says: "A United States commissioner is a *quasi* judicial officer, and in these hearings he acts judicially. *Moreover, this case was taken by appeal from the commissioner to the judge of the District Court and his decision was affirmed, so that there was an adjudication by a United States judge in the constitutional sense as well as by the commissioner acting as a judge in the sense of the statute.*"

And the court further says, "It is impossible for us to hold that it is not competent for Congress to empower a United States Commissioner to determine the various facts upon which citizenship depends," but the court has not gone to the length of saying that they would hold that Congress could empower a United States commissioner to determine *finally* the various facts upon which citizenship depends. It seems clear that the court recognizes the fact that a party aggrieved

by the adjudication of a commissioner still has the right to an adjudication of his case in the constitutional sense, when it makes use of the following language:

"Moreover, this case was taken by appeal from the commissioner to the judge of the District Court and his decision was affirmed, so that there was an adjudication by a United States Judge in the constitutional sense as well as by the commissioner acting as a judge in the sense of the statute," hence the delegation of power to a commissioner to determine citizenship is only a delegation of that power primarily, and his decision is subject to a review in the courts, hence a review by *due process of law*. In other words a trial and hearing according to due process of law. No such review is given from the inspector. If the commissioner acts without authority, or not in accordance with due process of law, the court may correct; not so in the case of an inspector, as his decision in a case where he has jurisdiction is final, and not reviewable in the courts, but it is only when the inspector acts without exclusive jurisdiction or authority in law that his decision can be reviewed in court, and as has been pointed out, the exclusive jurisdiction of the inspector is limited to aliens only, hence his decision is attacked in this proceeding and can be reviewed by *habeas corpus*. In such a case we say that we have the right to inquire by *habeas corpus* into the authority and jurisdiction of the inspector, and his authority and jurisdiction, or the authority and jurisdiction of any court to act, is always a subject of review by *habeas corpus*. Whether he acts upon sufficient evidence, if the jurisdiction and power are there, as in the case of an alien, is not subject to review by *habeas corpus*.

POINT SEVEN.

The judgment of the Circuit Court of Appeals should be affirmed.

Respectfully submitted,

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[4158]

34045

Supreme Court of the United States.

No. 591.—October Term, 1903.

The United States, Petitioner,
vs.
Sing Tuck or King Do and thirty-one others.

On writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit.

[April 25, 1904.]

Mr. Justice Holmes delivered the opinion of the Court.

This is a writ of *habeas corpus* against a Chinese Inspector and Inspector of Immigration. It appears from his return that the Chinese persons concerned came from China by way of Canada and were seeking admission into the United States. On examination by an inspector five gave their names, stated that they were born in the United States, (*United States* v. *Wong Kim Ark*, 169 U. S. 649,) and answered no further questions. The rest gave their names and then stood mute, not even alleging citizenship. The inspector decided against their right to enter the country and informed them of their right to appeal to the Secretary of Commerce and Labor. No appeal was taken, and while they were detained at a properly designated detention house for return to China a petition was filed by a lawyer purporting to act on their behalf, alleging that they all were citizens of the United States, and this writ was obtained. In the Circuit Court the detention was adjudged to be lawful, and the writ was dismissed without a trial on the merits. This decision was reversed by the Circuit Court of Appeals on the ground that the parties concerned were entitled to a judicial investigation of their status.

By the act of August 18, 1894, 28 Stat. 390, "In every case where an alien is excluded from admission into the United States under any law or treaty now existing or hereafter made, the decision of the appropriate immigration or customs officers, if adverse to the admission of such alien, shall be final, unless reversed on appeal to the Secretary of the Treasury." The jurisdiction of the Treasury Department was transferred to the Department of Commerce and Labor by the act of February 14, 1903, 32 Stat. 825. It was held by the Circuit Court of Appeals that the act of 1894 should not be construed to submit the right of a native-born citizen of the United States to return hither to the final determination of executive officers, and the conclusion was assumed to follow that these cases should have been tried on their merits. Before us it was argued that by the construction of the statute the fact of citizenship went to the jurisdiction of

the immigration officers, see *Gonzales* v. *Williams*, 192 U. S. 1, 7; *Miller* v. *Horton*, 152 Mass. 540, 548; and therefore that the statute did not purport to apply to one who was a citizen in fact. We are of opinion however that the words quoted apply to a decision on the question of citizenship, and that, even if it be true that the statute could not make that decision final, the consequence drawn by the Circuit Court of Appeals does not follow and is not correct.

We shall not argue the meaning of the words of the act. That must be taken to be established. *Lem Moon Sing* v. *United States*, 158 U. S. 538, 546, 547. As to whether or not the act could make the decision of an executive officer final upon the fact of citizenship we leave the question where we find it. The *Japanese Immigrant Case*, (*Yamataya* v. *Fisher*,) 189 U. S. 86, 97; *Fok Young Yo* v. *United States*, 185 U. S. 296, 304, 305. See *Chin Bak Kan* v. *United States*, 186 U. S. 193, 200. Whatever may be the law on that point, the decisions just cited are enough to show that it is too late to contend that the act of 1894 is void as a whole. But if the act is valid, even if ineffectual on this single point, then it points out a mode of procedure which must be followed before there can be a resort to the courts. In order to act at all the executive officer must decide upon the question of citizenship. If his jurisdiction is subject to being upset, still it is necessary that he should proceed if he decides that it exists. An appeal is provided by the statute. The first mode of attacking his decision is by taking that appeal. If the appeal fails it then is time enough to consider whether upon a petition showing reasonable cause there ought to be a further trial upon *habeas corpus*.

We perfectly appreciate, while we neither countenance nor discountenance, the argument drawn from the alleged want of jurisdiction. But while the consequence of that argument if sound is that both executive officers and Secretary of Commerce and Labor are acting without authority, it is one of the necessities of the administration of justice that even fundamental questions should be determined in an orderly way. If the allegations of a petition for *habeas corpus* setting up want of jurisdiction, whether of an executive officer or of an ordinary court, are true, the petitioner theoretically is entitled to his liberty at once. Yet a summary interruption of the regular order of proceedings, by means of the writ, is not always a matter of right. A familiar illustration is that of a person imprisoned upon criminal process by a State court under a State law alleged to be unconstitutional. If the law is unconstitutional the prisoner is wrongfully held. Yet except under exceptional circumstances the courts of the United States do not interfere by *habeas corpus*. The prisoner must in the first place take his case to the highest court of the State to which he can go, and after that he generally is left to the remedy by writ of error if he wishes to bring the case here. *Minnesota* v. *Brundage*, 180

U. S. 499; *Baker* v. *Grice*, 169 U. S. 284. In *Gonzales* v. *Williams*, 192 U. S. 1, there was no use in delaying the issue of the writ until an appeal had been taken, because in that case there was no dispute about the facts but merely a question of law. Here the issue, if there is one, is pure matter of fact, a claim of citizenship under circumstances and in a form naturally raising a suspicion of fraud.

Considerations similar to those which we have suggested lead to a further conclusion. Whatever may be the ultimate rights of a person seeking to enter the country and alleging that he is a citizen, it is within the power of Congress to provide at least for a preliminary investigation by an inspector, and for a detention of the person until he has established his citizenship in some reasonable way. If the person satisfies the inspector, he is allowed to enter the country without further trial. Now, when these Chinese, having that opportunity, saw fit to refuse it, we think an additional reason was given for not allowing a *habeas corpus* at that stage, The detention during the time necessary for investigation was not unlawful, even if all of these parties were citizens of the United States and were not attempting to upset the inspection machinery by a transparent device. *Wong Wing* v. *United States*, 163 U. S. 228, 235. They were offered a way to prove their alleged citizenship and to be set at large, which would be sufficient for most people who had a case and which would relieve the courts. If they saw fit to refuse that way, they properly were held down strictly to their technical rights.

But it is said that if, under any circumstances, the question of citizenship could be left to the final decision of an executive officer, the Chinese Regulations made under the statutes by the Department of Commerce and Labor are such that they do not allow a citizen due process of law, and the same argument is urged in favor of the right to decline to take any part in such proceedings from the outset. The rules objected to require the officer to prevent communication with the parties other than by officials under his control, and to have them examined promptly touching their right to admission. The examination is to be apart from the public, in the presence of the government officials and such witnesses only as the examining officer shall designate. This last is the provision especially stigmatized. It is said that the parties are allowed to produce only such witnesses as are designated by the officer. But that is a plain perversion of the meaning of the words. If the witnesses referred to are not merely witnesses to the examination, if they are witnesses in the cause, still the provision only excludes such witnesses at the discretion of the officer pending the examination of the party concerned—a natural precaution in this class of cases, the reasonableness of which does not need to be explained. It is common in ordinary trials. No right is given to the officer to exercise any control or choice as to the witnesses to be heard, and no such choice

was attempted in fact. On the contrary, the parties were told that if they could produce two witnesses who knew that they had the right to enter, their testimony would be taken and carefully considered, and various other attempts were made to induce the suggestion of any evidence or help to establish the parties' case, but they stood mute. The separate examination is another reasonable precaution, and it is required to take place promptly to avoid the hardship of a long detention. In case of appeal counsel are permitted to examine the evidence, Rule 7, and it is implied that new evidence, briefs, affidavits and statements may be submitted, all of which can be forwarded with the appeal. Rule 9. The whole scheme is intended to give as fair a chance to prove a right to enter the country as the necessarily summary character of the proceedings will permit.

We are of opinion that the attempt to disregard and override the provisions of the statutes and the rules of the department and to swamp the courts by a resort to them in the first instance must fail. We may add that, even if it is beyond the power of Congress to make the decision of the department final upon the question of citizenship, we agree with the Circuit Court of Appeals that a petition for *habeas corpus* ought not to be entertained, unless the court is satified that the petitioner can make out at least a *prima facie* case. A mere allegation of citizenship is not enough. But, before the courts can be called upon, the preliminary sifting process provided by the statutes must be gone through with. Whether after that a further trial may be had we do not decide.

Judgment reversed.

True copy.

Test:

Clerk Supreme Court, U. S.

Supreme Court of the United States.

No. 591.—October Term, 1903.

The United States, Petitioner, *vs.* Sing Tuck or King Do and thirty-one others.	On writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit.

[April 25, 1904.]

Mr. Justice Brewer, with whom concurred Mr. Justice Peckham, dissenting.

I am unable to concur in either the foregoing opinion or judgment. I have heretofore dissented in several cases involving the exclusion or expulsion of the Chinese, but, although my views on the questions are unchanged, do not care to repeat anything then said. I pass rather to consider the present case and the declarations of the court. That is, as stated in the opinion, one of persons claiming to be citizens of the United States denied by an inspector of immigration—a mere ministerial officer—the right to enter the country, and who are now informed by this court that their application to the courts for the enforcement of that right must be denied. They are told that their only remedy is by appeal from one ministerial officer to another.

The decision is based upon the act of August 18, 1894, (28 Stat. 390,) which provides:

"In every case where an alien is excluded from admission into the United States under any law or treaty now existing or hereafter made, the decision of the appropriate immigration or customs officers, if adverse to the admission of such alien, shall be final, unless reversed on appeal to the Secretary of the Treasury."

But by its very terms that act applies only to an alien, and these parties assert that they are not aliens. If not aliens, certainly that act is inapplicable. So affirms Rule 2, prescribed by the Secretary of Commerce and Labor, concerning the immigration of Chinese persons, which reads: "If the Chinese person has been born in the United States, neither the immigration acts nor the Chinese exclusion acts prohibiting persons of the Chinese race, and especially Chinese laborers, from coming into the United States apply to such person." So this court has held at the present term. (*Gonzales* v. *Williams*, 192 U. S. 1, decided January 4, 1904.) In that case it appeared that Isabella Gonzales, an unmarried woman, coming from

Porto Rico to New York, was prevented from landing and detained by the immigration commissioner as an alien immigrant. A writ of *habeas corpus* was issued on her behalf by the Circuit Court of the United States for the Southern District of New York. Upon a hearing the writ was dismissed and she remanded to the custody of the commissioner. On appeal to this court that decision was reversed, and it was said in the opinion (p. 7):

"If she was not an alien immigrant within the intent and meaning of the act of Congress entitled 'An act in amendment to the various acts relative to immigration and the importation of aliens under contract or agreement to perform labor,' approved March 3, 1891, (26 Stat. 1084, c. 551,) the commissioner had no power to detain or deport her, and the final order of the Circuit Court must be reversed."

There, as here, the applicant had not appealed from the decision of the immigration officer to the Secretary of the Treasury; that fact was pleaded in the return to the writ, and on the argument before us this act of August 18, 1894, was cited by the government and the argument made that the remedy was by appeal to the Secretary of the Treasury. I quote the language of the Solicitor General as reported (p. 4):

"The act of August 18, 1894, (28 Stat. 390,) makes the decision of the appropriate immigration or customs officer, if adverse to the admission of an alien, final unless reversed on appeal to the Secretary of the Treasury. Even if appellant herein was ultimately entitled to a writ of *habeas corpus*, she was not in a position justly to obtain the writ until she had prosecuted an unavailing appeal to the Secretary of the Treasury, and thus pursued her remedy in the executive course to the uttermost."

That case did not hold that the applicant was a citizen of the United States, but only that—being a subject of Porto Rico, an island ceded to the United States, and, as adjudged by a bare majority of this court in conflicting opinions, not within the full scope of constitutional protection—she was not an alien immigrant. Here the petitioners claim that they are citizens by birth, and the decision is that nevertheless they cannot be heard in a court to prove the fact which they allege. There the petition disclosed both a question of law and one of fact, for not until the return to the writ was the question of fact eliminated; here on the face of the petition only a question of fact is presented for the law applicable had been fully settled by the decision of this court in *United States* v. *Wong Kim Ark*, (169 U. S. 649.)

But it is said that, inasmuch as Congress has provided for an appeal from the immigration officer to the Secretary of the Treasury, or rather, since the recent act transferring jurisdiction to the Department of Commerce and Labor, to the Secretary of the latter department, the orderly administration of affairs requires that the remedy by appeal to the Secretary should be followed. It was not so held in the Gonzales case, and I do not appreciate why it

should be deemed necessary in the case of one claiming to be a citizen and not deemed necessary in respect to one who is merely not an alien immigrant. We have called American citizenship an "inestimable heritage," (*Chin Bak Kan*, 186 U. S. 193, 200,) and I cannot understand why one who claims it should be denied the earliest possible hearing in the courts upon the truth of his claim.

Why should any one who claims the right of citizenship be denied prompt access to the courts? If it be an "inestimable heritage," can Congress deprive one of the right to a judicial determination of its existence, and ought the courts to unnecessarily avoid or postpone an inquiry thereof? If it be said that the conduct of these petitioners before the inspector was not such as to justify a belief in the probability of their claim of citizenship, it is sufficient answer that they assert the claim and ask a right to be heard. I never supposed that courts could deny a party a hearing on the ground that they did not believe it probable that he could establish the claim which he makes.

The postponement of the right to judicial inquiry until after the remedy by appeal to the Secretary has been exhausted is justified by analogy to the rule which restrains this court from interfering with the orderly administration of criminal law in the courts of a State until after a final determination by the highest court of that State. But there is this essential difference: To the highest court of a State a writ of error runs from this court, and there is, therefore, propriety in waiting until the final decision of the courts of the States, the presumption being always that they will uphold the Constitution of the United States, and enforce any rights granted by it.

In *Ex parte Royall*, (117 U. S. 241, 251, 252,) this court said:

"Does the statute imperatively require the Circuit Court, by writ of *habeas corpus*, to wrest the petitioner from the custody of the State officers in advance of his trial in the State court? We are of opinion that while the Circuit Court has the power to do so, and may discharge the accused in advance of his trial if he is restrained of his liberty in violation of the National Constitution, it is not bound in every case to exercise such a power immediately upon application being made for the writ. We cannot suppose that Congress intended to compel those courts, by such means, to draw to themselves, in the first instance, the control of all criminal prosecutions commenced in State courts exercising authority within the same territorial limits, where the accused claims that he is held in custody in violation of the Constitution of the United States. The injunction to hear the case summarily, and thereupon 'to dispose of the party as law and justice require,' does not deprive the court of discretion as to the time and mode in which it will exert the powers conferred upon it. That discretion should be exercised in the light of the relations existing, under our system of government, between the judicial tribunals of the Union and of the States, and in recognition of the fact that the public good requires that those relations be not disturbed by unnecessary conflict between courts equally bound

to guard and protect rights secured by the Constitution. . . . This court holds that where a person is in custody, under process from a State court of original jurisdiction, for an alleged offence against the laws of such State, and it is claimed that he is restrained of his liberty in violation of the Constitution of the United States, the Circuit Court has a discretion, whether it will discharge him, upon *habeas corpus*, in advance of his trial in the court in which he is indicted; that discretion, however, to be subordinated to any special circumstances requiring immediate action. When the State court shall have finally acted upon the case, the Circuit Court has still a discretion whether, under all the circumstances then existing, the accused, if convicted, shall be put to his writ of error from the highest court of the State, or whether it will proceed, by writ of *habeas corpus*, summarily to determine whether the petitioner is restrained of his liberty in violation of the Constitution of the United States."

But here there is no appeal or writ of error from the decision of the Secretary to this or to any other court, and the remedy which must be pursued then as now is only that of *habeas corpus*. Indeed, in the opinion the court does not give to these petitioners encouragement to believe that there can be any judicial examination, even after the decision by the Secretary against their claim of American citizenship. If a judicial hearing at any time is not in terms denied, it is, at least, like a famous case of old, passed to "a convenient season." Meantime the American citizen must abide in the house of detention.

Further, there are special reasons why this prompt judicial inquiry by the writ of *habeas corpus* should be sustained. On July 27, 1903, the Secretary of Commerce and Labor, as authorized by statute, promulgated certain regulations concerning the admission of Chinese persons. Rule 4 named a dozen ports at which alone such persons should be permitted to enter, Malone, N. Y., where these petitioners are detained, being one of the number. Rules 6, 7, 8, 9, 21 and 22 are as follows:

"RULE 6. Immediately upon the arrival of Chinese persons at any port mentioned in Rule 4 it shall be the duty of the officer in charge of the administration of the Chinese exclusion laws to adopt suitable means to prevent communication with them by any persons other than officials under his control, to have said Chinese persons examined promptly, as by law provided, touching their right to admission and to permit those proving such right to land.

"RULE 7. The examination prescribed in Rule 6 should be separate and apart from the public, in the presence of government officials and such witness or witnesses only as the examining officer shall designate, and, if, upon the conclusion thereof, the Chinese applicant for admission is adjudged to be inadmissible, he should be advised of his right of appeal, and his counsel should be permitted, after duly filing notice of appeal, to examine, but not to make copies of, the evidence upon which the excluding decision is based.

"RULE 8. Every Chinese person refused admission under the provisions of the exclusion laws by the decision of the officer in charge at the port of

entry must, if he shall elect to take an appeal to the Secretary, give written notice thereof to said officer within two days after such decision is rendered.

"RULE 9. Notice of appeal provided for in Rule 8 shall act as a stay upon the disposal of the Chinese person whose case is thereby affected until a final decision is rendered by the Secretary; and within three days after the filing of such notice, unless further delay is required to investigate and report upon new evidence, the complete record of the case, together with such briefs, affidavits and statements as are to be considered in connection therewith, shall be forwarded to the Commissioner General of Immigration by the officer in charge at the port of arrival, accompanied by his views thereon in writing; but on such appeal no evidence will be considered that has not been made the subject of investigation and report by the said officer in charge."

"RULE 21. The burden of proof in all cases rests upon Chinese persons claiming the right of admission to, or residence within, the United States, to establish such right affirmatively and satisfactorily to the appropriate government officers, and in no case in which the law prescribes the nature of the evidence to establish such right shall other evidence be accepted in lieu thereof, and in every doubtful case the benefit of the doubt shall be given by administrative officers to the United States government.

"RULE 22. No authenticated copy of a judicial finding that a Chinese person was born in the United States shall be accepted as conclusive in favor of the person presenting it, unless he be completely identified as the person to whom such authenticated copy purports to relate."

By Rule 6 it is the duty of the inspector to prevent any communication between the immigrant and any person other than his own officials. In other words, no communication with counsel or with friends is permitted. By Rule 7 the examination is to be private, in the presence only of government officials and such witnesses as the examining officer shall designate. The most notorious outlaw in the land, when charged by the United States with crime, is, by constitutional enactment, (Art. 6, Amendments U. S. Constitution,) given compulsory process for obtaining witnesses in his favor and the assistance of counsel for his defence, but the Chinaman—although by birth a citizen of the United States—is thus denied counsel and the right of obtaining witnesses. After he has been adjudged inadmissible then, and then for the first time, is he permitted to have counsel and advised of his right of appeal, and such counsel, after filing notice of appeal, is permitted to examine but not make copies of the testimony upon which the excluding order is based. By Rule 8, if he desires to appeal, he must give written notice thereof within two days after the decision. By Rule 9, within three days after the filing of notice a complete record of the case is transmitted to the Commissioner General of Immigration, and on such appeal no evidence will be considered that has not been made the subject of investigation and report by the inspector. Can anything be more harsh and arbitrary? Coming into a port of the United States, as

these petitioners did into the port of Malone, placed as they were in a house of detention, shut off from communication with friends and counsel, examined before an inspector with no one to advise or counsel, only such witnesses present as the inspector may designate, and upon an adverse decision compelled to give notice of appeal within two days, within three days the transcript forwarded to the Commissioner General, and nothing to be considered by him except the testimony obtained in this Star Chamber proceeding. This is called due process of law to protect the rights of an American citizen, and sufficient to prevent inquiry in the courts.

But it is said that the applicants did not prove before the immigration officer that they were citizens, that some simply alleged the fact, while others said nothing, that they were told that if they would give the names of two witnesses their testimony would be taken and considered. But what provision of law is there for compelling the attendance of witnesses before such immigration officer or for taking depositions, and of what avail would be an *ex parte* inquiry of such witnesses? Must an American citizen, seeking to return to this his native land, be compelled to bring with him two witnesses to prove the place of his birth or else be denied his right to return, and all opportunity of establishing his citizenship in the courts of his country? No such rule is enforced against an American citizen of Anglo-Saxon descent, and if this be, as claimed, a government of laws and not of men, I do not think it should be enforced against American citizens of Chinese descent.

Again, by Rule 21, the burden of proof is cast upon the applicant, no other evidence is to be accepted except that which the law prescribes, and in every doubtful case the benefit of the doubt is to be given to the government. And by Rule 22 a judicial finding of citizenship is not to be accepted as conclusive unless the party presenting it is "completely identified." I showed in my dissenting opinion in *Fong Yue Ting*, (149 U. S. 698, 740,) that expulsion was punishment. That proposition was not denied by the majority of the court when applied to a citizen but only as applied to aliens (p. 709). If expulsion from the country is punishment for crime when applied to a citizen, can it be that the rule which requires the government to assume the burden of proof and which clothes the accused with the presumption of innocence can be changed by casting upon the individual the burden of showing that he is one not liable to such punishment? Can it be that the benefit of a doubt which attaches to all other accused persons is taken away from one simply because he is a Chinaman? And can it be that when one produces a judicial finding of citizenship such finding can be brushed one side unless the identity of the individual in whose behalf the finding was made is established beyond doubt?

I cast no reflections upon the immigration officer in the present case. I am simply challenging a system and provisions which place within the arbitrary power of an individual the denial of the right of an American citizen to free entrance into this country, and put such denial outside the scope of judicial inquiry. It may be true that a ministerial officer, in a secret and private investigation, may strive to ascertain the truth and to do justice, but unless we blind our eyes to the history of the long struggle in the mother country to secure protection to the liberty of the citizen, we must realize that a public investigation before a judicial tribunal, with the assistance of counsel and the privilege of cross-examination, is the best, if not the only, way to secure that result.

In my judgment we are making a curious judicial history. In *Yick Wo* v. *Hopkins*, (118 U. S. 356, 369,) decided in 1886, we said:

"The Fourteenth Amendment to the Constitution is not confined to the protection of citizens. It says: 'Nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.' These provisions are universal in their application to all persons within the territorial jurisdiction, without regard to any differences of race, of color or of nationality; and the equal protection of the laws is a pledge of the protection of equal laws."

In *United States* v. *Wong Kim Ark*, (169 U. S. 649,) decided in 1898, the petitioner, a Chinese person born in the United States, returning from China, was refused permission to land, and was restrained of his liberty by the collector, the officer then charged with that duty. Without making any appeal from the decision of such local officer, although the law as to appeal to the Secretary was then the same as now, he sued out a writ of *habeas corpus* from the District Court of the United States, which court, after hearing, discharged him on the ground that he was born within the United States and therefore a citizen thereof. On appeal to this court that decision was affirmed. No one connected with the case doubted that the immigration and exclusion laws had no application to him if he were a citizen or questioned his right to appeal in the first instance to the courts for his discharge from the illegal restraint.

In *Chin Bak Kan* v. *United States*, *supra*, decided in 1902, it appeared that Chin Bak Kan was brought before a commissioner of the United States charged with wrongfully coming in and remaining within the United States. After a hearing he was adjudged guilty of the charge by the commissioner and ordered removed to China. An appeal was taken to the District Court of the United States but the appeal was dismissed, and thereupon the case was brought here. The jurisdiction of the commissioner was challenged, and in disposing of that the court said (p. 200):

"A United States commissioner is a *quasi* judicial officer, and in these hearings he acts judicially. Moreover, this case was taken by appeal from

the commissioner to the judge of the District Court, and his decision was affirmed, so that there was an adjudication by a United States judge in the constitutional sense as well as by the commissioner acting as a judge in the sense of the statute."

In the *Japanese Immigrant Case*, (189 U. S. 86, 100,) decided in 1903, this court, while sustaining the action of the ministerial officers, said:

"But this court has never held, nor must we now be understood as holding, that administrative officers, when executing the provisions of a statute involving the liberty of persons, may disregard the fundamental principles that inhere in 'due process of law' as understood at the time of the adoption of the Constitution. One of these principles is that no person shall be deprived of his liberty without opportunity, at some time, to be heard, before such officers, in respect of the matters upon which that liberty depends—not necessarily an opportunity upon a regular set occasion, and according to the forms of judicial procedure, but one that will secure the prompt, vigorous action contemplated by Congress, and at the same time be appropriate to the nature of the case upon which such officers are required to act. Therefore, it is not competent for the Secretary of the Treasury or any executive officer, at any time within the year limited by the statute, arbitrarily to cause an alien, who has entered the country, and has become subject in all respects to its jurisdiction, and a part of its population, although alleged to be illegally here, to be taken into custody and deported without giving him all opportunity to be heard upon the questions involving his right to be and remain in the United States. No such arbitrary power can exist where the principles involved in due process of law are recognized."

This was in the case of one confessedly an alien.

Now the court holds that parties claiming to be citizens can have that claim determined adversely by a mere ministerial officer, and be denied the right of immediate appeal to the courts for a judicial inquiry and determination thereof. I cannot believe that the courts of this republic are so burdened with controversies about property that they cannot take time to determine the right of personal liberty by one claiming to be a citizen.

Further, even if it should be proved that these petitioners are not citizens of the United States but simply Chinese laborers seeking entrance into this country, it may not be amiss to note the significance of the act of April 29, 1902, (32 Stat. 176,) re-enacting and continuing the prior laws respecting the exclusion of the Chinese, "so far as the same are not inconsistent with treaty obligations," taken in connection with this provision in article 4 of the treaty with China, proclaimed December 8, 1894, "that Chinese laborers or Chinese of any other class, either permanently or temporarily residing in the United States, shall have for the protection of their persons and property all rights that are given by the laws of the United States to citizens of the most favored nation, excepting the right to become naturalized citizens." I am not astonished at the report current in the papers that China has declined to continue this treaty for another term of ten years.

Finally, let me say that the time has been when many young men from China came to our educational institutions to pursue their studies, when her commerce sought our shores, and her people came to build our railroads, and when China looked upon this country as her best friend. If all this be reversed and the most populous nation on earth becomes the great antagonist of this republic, the careful student of history will recall the words of Scripture, "they have sown the wind, and they shall reap the whirlwind," and for cause of such antagonism need look no further than the treatment accorded during the last twenty years by this country to the people of that nation.

I am authorized to say that Mr. Justice PECKHAM concurs in this dissent.

True copy.

Test:

Clerk Supreme Court, U. S.